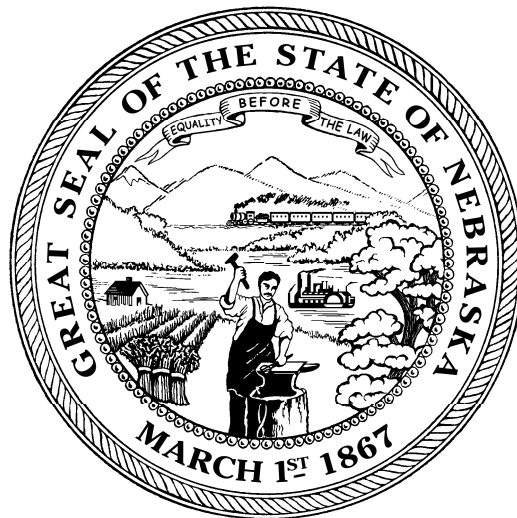


# REVISED STATUTES OF NEBRASKA

## REISSUE OF VOLUME 3C

### 2021

COMPRISING ALL THE STATUTORY LAWS OF A  
GENERAL NATURE IN FORCE AT DATE OF  
PUBLICATION ON THE SUBJECTS ASSIGNED  
TO CHAPTERS 54 TO 60, INCLUSIVE



Published by the Revisor of Statutes

## **CERTIFICATE OF AUTHENTICATION**

I, Marcia M. McClurg, Revisor of Statutes, do hereby certify that the Reissue of Volume 3C of the Revised Statutes of Nebraska, 2021, contains all of the laws set forth in Chapters 54 to 60, appearing in Volume 3B, Revised Statutes of Nebraska, 2010, as amended and supplemented by the One Hundred Second Legislature, First Session, 2011, through the One Hundred Seventh Legislature, First Special Session, 2021, of the Nebraska Legislature, in force at the time of publication hereof.

Marcia M. McClurg  
Revisor of Statutes

Lincoln, Nebraska  
October 1, 2021

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REISSUE REVISED STATUTES  
OF NEBRASKA, 2021

(in full)

R.R.S.2021

(abbreviated)

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## LIVESTOCK

# CHAPTER 54

## LIVESTOCK

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**LIVESTOCK**

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**LIVESTOCK BRAND ACT**

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54-109.	Repealed. Laws 1999, LB 778, § 84.
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54-120.	Repealed. Laws 1963, c. 317, § 2.
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54-122.	Repealed. Laws 1963, c. 317, § 2.
54-123.	Repealed. Laws 1963, c. 317, § 2.
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54-127.	Repealed. Laws 1971, LB 323, § 25.
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54-134.03.	Repealed. Laws 1980, LB 797, § 27.
54-134.04.	Repealed. Laws 1980, LB 797, § 27.
54-134.05.	Repealed. Laws 1980, LB 797, § 27.
54-134.06.	Repealed. Laws 1980, LB 797, § 27.
54-134.07.	Repealed. Laws 1996, LB 1174, § 9.
54-134.08.	Repealed. Laws 1980, LB 797, § 27.
54-135.	Repealed. Laws 1999, LB 778, § 84.
54-135.01.	Repealed. Laws 1999, LB 778, § 84.
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54-145.01.	Repealed. Laws 1999, LB 778, § 84.
54-145.02.	Repealed. Laws 1999, LB 778, § 84.
54-145.03.	Repealed. Laws 1999, LB 778, § 84.
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54-145.05.	Repealed. Laws 1999, LB 778, § 84.
54-145.06.	Repealed. Laws 1999, LB 778, § 84.
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54-147.	Repealed. Laws 1999, LB 778, § 84.
54-147.01.	Repealed. Laws 1999, LB 778, § 84.
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54-149.	Repealed. Laws 1971, LB 323, § 25.
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54-153.02.	Repealed. Laws 1999, LB 778, § 84.
54-153.03.	Repealed. Laws 1999, LB 778, § 84.
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54-158.	Transferred to section 54-1523.
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**54-101 Repealed. Laws 1999, LB 778, § 84.**

**54-101.01 Repealed. Laws 1999, LB 778, § 84.**

**54-102 Repealed. Laws 1999, LB 778, § 84.**

**54-103 Repealed. Laws 1999, LB 778, § 84.**

**54-104 Repealed. Laws 1999, LB 778, § 84.**

**54-104.01 Repealed. Laws 1999, LB 778, § 84.**

**54-105 Repealed. Laws 1999, LB 778, § 84.**

**54-106 Repealed. Laws 1999, LB 778, § 84.**

**54-107 Repealed. Laws 1999, LB 778, § 84.**

**54-108 Repealed. Laws 1999, LB 778, § 84.**

**54-109 Repealed. Laws 1999, LB 778, § 84.**

**54-109.01 Repealed. Laws 1999, LB 778, § 84.**

**54-110 Repealed. Laws 1999, LB 778, § 84.**

**54-111 Repealed. Laws 1957, c. 236, § 1.**

**54-112 Repealed. Laws 1999, LB 778, § 84.**

**54-113 Repealed. Laws 1980, LB 797, § 27.**

**54-114 Repealed. Laws 1999, LB 778, § 84.**

**54-115 Repealed. Laws 1999, LB 778, § 84.**

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- 54-125 Repealed. Laws 1999, LB 778, § 84.
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- 54-128 Repealed. Laws 1979, LB 564, § 21.
- 54-129 Repealed. Laws 1999, LB 778, § 84.
- 54-130 Repealed. Laws 1999, LB 778, § 84.
- 54-131 Repealed. Laws 1999, LB 778, § 84.
- 54-132 Repealed. Laws 1999, LB 778, § 84.
- 54-133 Repealed. Laws 1999, LB 778, § 84.
- 54-133.01 Repealed. Laws 1999, LB 778, § 84.
- 54-133.02 Repealed. Laws 1980, LB 797, § 27.
- 54-133.03 Repealed. Laws 1999, LB 778, § 84.
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- 54-134.01 Repealed. Laws 1980, LB 797, § 27.
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- 54-134.03 Repealed. Laws 1980, LB 797, § 27.
- 54-134.04 Repealed. Laws 1980, LB 797, § 27.
- 54-134.05 Repealed. Laws 1980, LB 797, § 27.
- 54-134.06 Repealed. Laws 1980, LB 797, § 27.
- 54-134.07 Repealed. Laws 1996, LB 1174, § 9.
- 54-134.08 Repealed. Laws 1980, LB 797, § 27.
- 54-135 Repealed. Laws 1999, LB 778, § 84.
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- 54-136 Repealed. Laws 1999, LB 778, § 84.
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- 54-137.02 Repealed. Laws 1980, LB 797, § 27.
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- 54-140 Repealed. Laws 1999, LB 778, § 84.
- 54-141 Repealed. Laws 1999, LB 778, § 84.

- 54-141.01 Repealed. Laws 1985, LB 16, § 1.
- 54-142 Repealed. Laws 1999, LB 778, § 84.
- 54-143 Repealed. Laws 1999, LB 778, § 84.
- 54-143.01 Repealed. Laws 1999, LB 778, § 84.
- 54-143.02 Repealed. Laws 1999, LB 778, § 84.
- 54-144 Repealed. Laws 1999, LB 778, § 84.
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- 54-145.05 Repealed. Laws 1999, LB 778, § 84.
- 54-145.06 Repealed. Laws 1999, LB 778, § 84.
- 54-146 Repealed. Laws 1971, LB 323, § 25.
- 54-147 Repealed. Laws 1999, LB 778, § 84.
- 54-147.01 Repealed. Laws 1999, LB 778, § 84.
- 54-148 Repealed. Laws 1999, LB 778, § 84.
- 54-149 Repealed. Laws 1971, LB 323, § 25.
- 54-150 Repealed. Laws 1999, LB 778, § 84.
- 54-151 Repealed. Laws 1981, LB 545, § 52.
- 54-152 Repealed. Laws 1999, LB 778, § 84.
- 54-153 Repealed. Laws 1999, LB 778, § 84.
- 54-153.01 Repealed. Laws 1999, LB 778, § 84.
- 54-153.02 Repealed. Laws 1999, LB 778, § 84.
- 54-153.03 Repealed. Laws 1999, LB 778, § 84.
- 54-154 Repealed. Laws 1969, c. 450, § 21.
- 54-155 Repealed. Laws 1999, LB 778, § 84.
- 54-156 Repealed. Laws 1999, LB 778, § 84.
- 54-157 Transferred to section 54-1522.
- 54-158 Transferred to section 54-1523.
- 54-159 Repealed. Laws 1999, LB 778, § 84.

**54-160 Repealed. Laws 1999, LB 778, § 84.**

**54-161 Repealed. Laws 1999, LB 778, § 84.**

**54-162 Repealed. Laws 1999, LB 778, § 84.**

**54-163 Repealed. Laws 1999, LB 778, § 84.**

**54-164 Repealed. Laws 1999, LB 778, § 84.**

**54-165 Repealed. Laws 1999, LB 778, § 84.**

**54-166 Repealed. Laws 1999, LB 778, § 84.**

**54-167 Repealed. Laws 1999, LB 778, § 84.**

**54-168 Repealed. Laws 1999, LB 778, § 84.**

**54-169 Repealed. Laws 1999, LB 778, § 84.**

**54-170 Act, how cited.**

Sections 54-170 to 54-1,131 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; Laws 2014, LB768, § 1; Laws 2014, LB884, § 1; Laws 2021, LB572, § 1.  
Effective date August 28, 2021.

**54-171 Definitions; where found.**

For purposes of the Livestock Brand Act, the definitions found in sections 54-171.01 to 54-190 shall be used.

**Source:** Laws 1999, LB 778, § 2; Laws 2013, LB435, § 2; Laws 2014, LB768, § 2; Laws 2021, LB572, § 2.  
Effective date August 28, 2021.

**54-171.01 Approved nonvisual identifier, defined.**

Approved nonvisual identifier means a nonvisual method of livestock identification approved by the Nebraska Brand Committee such as an electronic device, a nose print, a retinal scan, a DNA match, or any other such nonvisual method of livestock identification.

**Source:** Laws 2021, LB572, § 3.  
Effective date August 28, 2021.

**54-172 Bill of sale, defined.**

Bill of sale means a formal instrument for the conveyance or transfer of title to livestock or other goods and chattels. The bill of sale shall state the purchaser's name and address, the date of transfer, the guarantee of title, the number of livestock transferred, the sex of such livestock, the brand or brands, the location of the brand or brands or a statement to the effect that the animal is unbranded, any approved nonvisual identifiers, and the name and address of the seller. The signature of the seller shall be attested by at least one witness or acknowledged by a notary public or by some other officer authorized by state law to take acknowledgments. For any conveyance or transfer of title to cattle

subject to assessment imposed pursuant to the federal Beef Promotion and Research Order, 7 C.F.R. part 1260, for which the purchaser is the collecting person pursuant to 7 C.F.R. 1260.311 for purposes of collecting and remitting such assessment, the bill of sale shall include a notation of the amount the purchaser collected from the seller or deducted from the sale proceeds for the assessment. A properly executed bill of sale means a bill of sale that is provided by the seller and received by the purchaser.

**Source:** Laws 1999, LB 778, § 3; Laws 2014, LB768, § 3; Laws 2021, LB572, § 10.  
Effective date August 28, 2021.

**54-173 Brand clearance, defined.**

Brand clearance means the documentary evidence of ownership that is issued and signed by a brand inspector and given to persons who have legally purchased cattle at a livestock auction or sale where a brand inspection service is provided. The brand clearance shall give the name and address of sale or auction where issued, the name of purchaser, the number and sex of cattle, any brands, the location of any brands on the cattle, and any approved nonvisual identifiers.

**Source:** Laws 1999, LB 778, § 4; Laws 2021, LB572, § 11.  
Effective date August 28, 2021.

**54-174 Brand inspection agency, defined.**

Brand inspection agency means an agency of a state, or a duly organized livestock association of a state, authorized by state law and registered with the Packers and Stockyards Division of the United States Department of Agriculture to charge and collect, at designated stockyards, packing plants, sales barns, or farm and ranch loading points, a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of livestock originating in or shipped from such state for the purpose of determining the ownership of such livestock.

**Source:** Laws 1999, LB 778, § 5.

**54-175 Brand inspection area, defined.**

Brand inspection area means that portion of the State of Nebraska designated in section 54-1,109, where brand inspection is mandatory.

**Source:** Laws 1999, LB 778, § 6.

**54-175.01 Brand inspection service area, defined.**

Brand inspection service area means all Nebraska counties and areas of Nebraska counties contiguous with the brand inspection area designated by section 54-1,109.

**Source:** Laws 2014, LB768, § 4.

**54-176 Brand inspector, defined.**

Brand inspector means a person employed by the Nebraska Brand Committee, or some other brand inspection agency, inside or outside of the State of Nebraska, for the purpose of identifying brands, marks, or other identifying characteristics of livestock or approved nonvisual identifiers to determine the

existence of such brands, marks, or identifying characteristics or identifiers and from such determinations attempt to establish correct and true ownership of such livestock, and generally carry out the provisions and enforcement of all laws pertaining to brands, brand inspection, physical inspection, electronic inspection, and associated livestock laws.

**Source:** Laws 1999, LB 778, § 7; Laws 2021, LB572, § 12.  
Effective date August 28, 2021.

**54-177 Carcass, defined.**

Carcass means the body, or part thereof but not less than one-fourth of a body, of any dead or slaughtered livestock.

**Source:** Laws 1999, LB 778, § 8.

**54-178 Cattle, defined.**

Cattle means bovine cattle only and does not relate to or include any other kind of animal.

**Source:** Laws 1999, LB 778, § 9.

**54-179 Certificate of inspection, defined.**

Certificate of inspection means the official document issued and signed by a brand inspector authorizing (1) movement of livestock from a point of origin within the brand inspection area to a destination either inside or outside of the brand inspection area or outside of this state, (2) slaughter of livestock as specified on such certificate, or (3) the change of ownership of livestock as specified on such certificate. A certificate of inspection shall designate, as needed, the name of the shipper, consignor, or seller of the livestock, the purchaser or consignee of the livestock, the destination of the livestock, the vehicle license number or carrier number, the miles driven by an inspector to perform inspection, the amount of inspection fees collected, the number and sex of the livestock to be moved or slaughtered, any brands on the livestock, any approved nonvisual identifiers, and the brand owner. A certificate of inspection shall be construed and is intended to be documentary evidence of ownership on all livestock covered by such document.

**Source:** Laws 1999, LB 778, § 10; Laws 2017, LB600, § 1; Laws 2021, LB572, § 13.  
Effective date August 28, 2021.

**54-179.01 Certified bill of sale, defined.**

Certified bill of sale means a document generated by the Nebraska Brand Committee from information provided electronically by a qualified dairy when selling calves under thirty days of age for beef production purposes. Such information shall include the name and physical address of the seller, the name and physical address of the purchaser, the number of head being sold, a physical description of the calves including date of birth, the color and sex, any identifiers such as metal tags or dangle tags, and any brands and their location, the date of the transfer of ownership, and if the assessment imposed pursuant

to the federal Beef Promotion and Research Order, 7 C.F.R. part 1260, has been collected.

**Source:** Laws 2021, LB572, § 4.  
Effective date August 28, 2021.

**54-179.02 Certified transportation permit, defined.**

Certified transportation permit means a document generated by the Nebraska Brand Committee from information provided electronically by a qualified dairy when moving calves under thirty days of age out of the inspection area for beef production purposes. Such information shall include the name and physical address of the owner, the number of head being transported, a physical description of the calves including the date of birth, the color and sex, any identifiers such as metal tags or dangle tags, and any brands and their location, and the actual or intended date of transport.

**Source:** Laws 2021, LB572, § 5.  
Effective date August 28, 2021.

**54-179.03 Electronic inspection, defined.**

Electronic inspection means a method of performing inspections of livestock enrolled with the Nebraska Brand Committee utilizing approved nonvisual identifier means of identification.

**Source:** Laws 2021, LB572, § 6.  
Effective date August 28, 2021.

**54-179.04 Enrollment, defined.**

Enrollment means the registration of livestock identified by nonvisual identifier means of livestock identification approved by the Nebraska Brand Committee and which occurs electronically and uses only those approved identifiers for evidence of ownership.

**Source:** Laws 2021, LB572, § 7.  
Effective date August 28, 2021.

**54-180 Estray, defined.**

Estray means any livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown in the area where found, any such livestock which is branded with a brand which is not on record in the office of the Nebraska Brand Committee, or any livestock for which ownership has not been established as provided in section 54-1,118.

**Source:** Laws 1999, LB 778, § 11.

**54-181 Freeze brand, defined.**

Freeze brand means a mark or brand that is created on a live animal in a depigmentation technique, whereby the pigment-producing cells in the skin of an animal are destroyed by the application of intense cold to the skin area.

**Source:** Laws 1999, LB 778, § 12.

**54-182 Investigator, defined.**

Investigator means an employee of the Nebraska Brand Committee who is also a deputy state sheriff and has the duty, responsibility, and authority to enforce all state statutes pertaining to brands, brand inspection, physical inspection, electronic inspection, and associated livestock laws. An investigator is also responsible for the investigation of all problems associated with brands, brand inspection, and associated livestock enforcement problems.

**Source:** Laws 1999, LB 778, § 13; Laws 2021, LB572, § 14.  
Effective date August 28, 2021.

Failure to give cautionary instruction with reference to testimony of investigator for Nebraska Brand Committee was not reversible error. State v. Nelson, 182 Neb. 31, 152 N.W.2d 10 (1967).

**54-183 Livestock, defined.**

Livestock means any domestic cattle, horses, mules, donkeys, sheep, or swine.

**Source:** Laws 1999, LB 778, § 14.

Dogs are not livestock and the care or production of dogs cannot be included in the term animal husbandry. City of Beatrice v. Goodenkauf, 219 Neb. 756, 366 N.W.2d 411 (1985).

**54-184 Mark, defined.**

A mark means a physical identification that includes, but is not limited to, visible characteristics on an animal such as a natural, accidental, or manmade blemish that sets apart a particular animal from all others. Such marks include, but are not limited to, hair coloration, scars, brands, earmarks, or tattoos.

**Source:** Laws 1999, LB 778, § 15.

**54-185 Market agency, defined.**

Market agency means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services, meaning services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivering, shipping, weighing, or handling, in commerce, of livestock.

**Source:** Laws 1999, LB 778, § 16.

**54-186 Open market, defined.**

Open market means a sales barn, market agency, stockyard, packing plant, or terminal market located outside of the brand inspection area or located outside of this state where brand inspection is maintained either by employees of the Nebraska Brand Committee or by some other state under a reciprocal agreement as allowed under the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as amended.

**Source:** Laws 1999, LB 778, § 17.

**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.



**54-187 Person, defined.**

Person means any individual, partnership, limited liability company, corporation, association, firm, or agents or servants of an individual or business entity.

**Source:** Laws 1999, LB 778, § 18.

**54-187.01 Physical inspection, defined.**

Physical inspection means an inspection for purposes of the Livestock Brand Act performed by an employee of the Nebraska Brand Committee physically present at the location of the inspected animals to verify ownership through visual observation of brands or other distinguishing markings and physical characteristics of the livestock and examination of any associated documentary or other evidence of ownership.

**Source:** Laws 2021, LB572, § 8.  
Effective date August 28, 2021.

**54-187.02 Qualified dairy, defined.**

Qualified dairy means a milk production facility with a Grade A milk producer permit or a manufacturing grade milk producer permit pursuant to section 2-3968.

**Source:** Laws 2021, LB572, § 9.  
Effective date August 28, 2021.

**54-188 Registered feedlot, defined.**

Registered feedlot means a feedlot registered under section 54-1,120.

**Source:** Laws 1999, LB 778, § 19.

**54-189 Satisfactory evidence of ownership, defined.**

Satisfactory evidence of ownership consists of the brands, tattoos, or marks on the livestock; approved nonvisual identifiers; point of origin of livestock; the physical description of the livestock; the documentary evidence, such as bills of sale, brand clearance, certificates of inspection, breed registration certificates, animal health or testing certificates, genomic testing certificates, recorded brand certificates, purchase sheets, scale tickets, disclaimers of interest, affidavits, court orders, security agreements, powers of attorney, canceled checks, bills of lading, or tags; and such other facts, statements, or circumstances that taken in whole or in part cause an inspector to believe that proof of ownership is established.

**Source:** Laws 1999, LB 778, § 20; Laws 2017, LB600, § 2; Laws 2021, LB572, § 15.  
Effective date August 28, 2021.

**54-190 Tattoo, defined.**

Tattoo means the conspicuous curvilinear marks or patterns brought about by pricking a pigment coloration into the skin of an animal by using a needle or similar device or the act of marking, coloring, or pricking into the skin of an animal coloring matter or ink which forms an indelible mark or figure.

**Source:** Laws 1999, LB 778, § 21.

**54-191 Nebraska Brand Committee; created; members; terms; vacancy; bond or insurance; expenses; purpose.**

(1) The Nebraska Brand Committee is hereby created. Beginning August 28, 2007, the brand committee shall consist of five members appointed by the Governor, subject to confirmation by the Legislature. At least three appointed members shall be active cattlemen and at least one appointed member shall be an active cattle feeder. The Secretary of State and the Director of Agriculture, or their designees, shall be nonvoting, ex officio members of the brand committee. The appointed members shall be owners of cattle within the brand inspection area, shall reside within the brand inspection area, shall be owners of Nebraska-recorded brands, and shall be persons whose principal business and occupation is the raising or feeding of cattle within the brand inspection area.

(2) The members of the brand committee shall elect a chairperson and vice-chairperson from among its appointed members during the first meeting held after September 1 each calendar year. A member may be reelected to serve as chairperson or vice-chairperson.

(3) The terms of the members shall be four-year, staggered terms, beginning on August 28 of the year of initial appointment or reappointment and concluding on August 27 of the year of expiration. At the expiration of the term of an appointed member, the Governor shall appoint a successor, subject to confirmation by the Legislature. If there is a vacancy on the brand committee, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. Any appointment to fill a vacancy shall be subject to confirmation by the Legislature.

(4) The action of a majority of the members shall be deemed the action of the brand committee. No appointed member shall hold any elective or appointive state or federal office while serving as a member of the brand committee. Each member and each brand committee employee who collects or who is the custodian of any funds shall be bonded or insured as required under section 11-201. The appointed members of the brand committee shall be reimbursed for expenses in attending meetings of the brand committee or in performing any other duties that are prescribed in the Livestock Brand Act or section 54-415, as provided for in sections 81-1174 to 81-1177.

The purpose of the Nebraska Brand Committee is to protect Nebraska brand and livestock owners from the theft of livestock through established brand recording, brand inspection, and livestock theft investigation.

**Source:** Laws 1999, LB 778, § 22; Laws 2004, LB 884, § 26; Laws 2007, LB422, § 1; Laws 2017, LB600, § 3; Laws 2020, LB381, § 48; Laws 2021, LB572, § 16.  
Effective date August 28, 2021.

**54-192 Nebraska Brand Committee; employees; executive director; duties; chief investigator; brand recorder; grievance procedure.**

(1) The Nebraska Brand Committee shall employ such employees as may be necessary to properly carry out the Livestock Brand Act and section 54-415, fix the salaries of such employees, and make such expenditures as are necessary to properly carry out such act and section. Employees of the brand committee shall receive mileage computed at the rate provided in section 81-1176. The brand committee shall select and designate a location or locations where the

brand committee shall keep and maintain an office and where records of the brand inspection and investigation proceedings, transactions, communications, brand registrations, and official acts shall be kept.

(2) The brand committee shall employ an executive director who shall be the brand committee head for administrative purposes. The executive director shall keep a record of all proceedings, transactions, communications, and official acts of the brand committee, shall be custodian of all records of the brand committee, and shall perform such other duties as may be required by the brand committee. The executive director shall call a meeting at the direction of the chairperson of the brand committee, or in his or her absence the vice-chairperson, or upon the written request of two or more members of the brand committee. The executive director shall have supervisory authority to direct and control all full-time and part-time employees of the brand committee. This authority allows the executive director to hire employees as are needed on an interim basis subject to approval or confirmation by the brand committee for regular employment. The executive director may place employees on probation and may discharge an employee.

(3) The brand committee shall employ a chief investigator who shall report to the executive director. The chief investigator shall meet the qualifications of an investigator as defined in section 54-182. Under the direction of the executive director, the chief investigator shall be chief of field operations and supervise brand committee investigators and inspectors.

(4) The brand committee shall employ a brand recorder who shall be responsible for the processing of all applications for new livestock brands, the transfer of ownership of existing livestock brands, the maintenance of accurate and permanent records relating to livestock brands, and such other duties as may be required by the brand committee.

(5) If any employee of the brand committee after having been disciplined, placed on probation, or having had his or her services terminated desires to have a hearing before the entire brand committee, such a hearing shall be granted as soon as is practicable and convenient for all persons concerned. The request for such a hearing shall be made in writing by the employee alleging the grievance and shall be directed to the executive director. After hearing all testimony surrounding the grievance of such employee, the brand committee, at its discretion, may approve, rescind, nullify, or amend all actions as previously taken by the executive director.

**Source:** Laws 1999, LB 778, § 23; Laws 2007, LB422, § 2; Laws 2017, LB600, § 4; Laws 2019, LB660, § 1.

#### **54-193 Nebraska Brand Committee; brand publication.**

The Nebraska Brand Committee shall periodically have published in book form, electronic medium, or such other method prescribed by the committee a list of all brands recorded with the brand committee at the time of such publication. Such publication may be supplemented from time to time. The publication shall contain a facsimile of all recorded brands, together with the owner's name and post office address, and shall be arranged in convenient form for reference. The brand committee shall send, without any charge, the publication as required by section 51-413 to the Nebraska Publications Clearinghouse and shall provide the publication to each inspector of record and to the county sheriff of each county in the State of Nebraska, which shall be kept

as a matter of public record. The publication may be sold to the general public for a price equal to or less than the actual cost of production.

**Source:** Laws 1999, LB 778, § 24; Laws 2002, LB 589, § 1.

**54-194 Documents; signature and seal requirements.**

The director of the Nebraska Brand Committee or the chairperson of the brand committee shall have the authority to sign all certificates and other documents that may by law require certification by signature. Such documents shall include, but not be limited to, new brand certificates, brand transfer certificates, duplicate brand certificates, and brand renewal receipts. A facsimile of the brand committee seal and the signature of the brand recorder shall also be placed on all brand certificates.

**Source:** Laws 1999, LB 778, § 25; Laws 2007, LB422, § 3.

**54-195 Assessments and promotional materials.**

(1) The Nebraska Brand Committee may contract to collect assessments made by any public, quasi-public, or private agency or organization on the sale of cattle, beef, and beef products in Nebraska by producers and importers of such cattle, beef, and beef products. The brand committee may charge such agency or organization for collection of the assessments. The charge for collection of assessments shall be used to cover administrative costs of the brand committee, but such charge shall not exceed five percent of the assessments collected.

(2) The brand committee may authorize and direct its employees to disseminate or otherwise distribute various materials promoting the cattle industry.

**Source:** Laws 1999, LB 778, § 26; Laws 2017, LB600, § 5.

**54-196 Rules and regulations.**

The Nebraska Brand Committee may adopt and promulgate rules and regulations to carry out the Livestock Brand Act and section 54-415.

**Source:** Laws 1999, LB 778, § 27.

Delegation of power to make rules and regulations was essential to complete exercise of powers conferred. *Satterfield v. State*, 172 Neb. 275, 109 N.W.2d 415 (1961).

**54-197 Nebraska Brand Inspection and Theft Prevention Fund; created; use; investment.**

The Nebraska Brand Inspection and Theft Prevention Fund is created. Fees and money collected pursuant to the Livestock Brand Act not otherwise provided for in the act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used by the Nebraska Brand Committee in the administration and enforcement of the act and section 54-415. All expenses and salaries provided for under such act or incurred by reason thereof shall be paid out of the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1999, LB 778, § 28.

**Cross References**

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

**54-198 Recorded livestock brand; requirements; in-herd identification; prohibited act.**

(1) Any person may record a brand, which he or she has the exclusive right to use in this state, and it is unlawful to use any brand for branding any livestock unless the person using such brand has recorded that brand with the Nebraska Brand Committee. A brand is a mark consisting of symbols, characters, numerals, or a combination of such intended as a visual means of ownership identification when applied to the hide of an animal. Only a hot iron or freeze brand or other method approved by the brand committee shall be used to apply a brand to a live animal.

(2) A hot iron brand or freeze brand may be used for in-herd identification purposes such as for year or production records. With respect to hot iron brands used for in-herd identification, the numerals 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9 in singular or triangular position are reserved on both the right and left shoulder of all cattle, except that such shoulder location for a single-number hot iron brand may be used for year branding for in-herd identification purposes, and an alphabetical letter may be substituted for one of the numerals used in a triangular configuration for in-herd identification purposes. Hot iron brands used for in-herd identification shall be used in conjunction with the recorded hot iron brand and shall be on the same side of the animal as the recorded hot iron brand. Freeze branding for in-herd identification may be applied in any location and any configuration with any combination of numerals or alphabetical letters.

(3) It shall be unlawful to knowingly maintain a herd containing one or more animals which the possessor has branded, or caused to be branded, in violation of this section or any other provision of the Livestock Brand Act.

**Source:** Laws 1999, LB 778, § 29; Laws 2000, LB 213, § 4; Laws 2002, LB 589, § 2; Laws 2017, LB600, § 6; Laws 2021, LB572, § 17.  
Effective date August 28, 2021.

**54-199 Livestock brand; application; fees; requirements; issuance.**

(1) To record a brand, a person shall forward to the Nebraska Brand Committee a facsimile or description of the brand desired to be recorded, a written application, and a recording fee and research fee established by the brand committee. Such recording fee may vary according to the number of locations and methods of brand requested but shall not be more than one hundred fifty dollars per application. Such research fee shall be charged on all applications and shall not be more than fifty dollars per application.

(2) For recording of visual brands, upon receipt of a facsimile of the brand, an application, and the required fee, the brand committee shall determine compliance with the following requirements:

(a) The brand shall be an identification mark that is applied to the hide of a live animal by hot iron branding or by either hot iron branding or freeze branding. The brand shall be on either side of the animal in any one of three locations, the shoulder, ribs, or hip;

(b) The brand is not recorded under the name of any other person and does not conflict with or closely resemble a prior recorded brand;

(c) The brand application specifies the left or right side of the animal and the location on that side of the animal where the brand is to be placed;

(d) The brand is not recorded as a trade name nor as the name of any profit or nonprofit corporation, unless such trade name or corporation is of record, in current good standing, with the Secretary of State; and

(e) The brand is, in the judgment of the brand committee, legible, adequate, and of such a nature that the brand when applied can be properly read and identified by employees of the brand committee.

(3) All visual brands shall be recorded as a hot iron brand only unless a co-recording as a freeze brand or other approved method of branding is requested by the applicant. The brand committee shall approve co-recording a brand as a freeze brand unless the brand would not be distinguishable from in-herd identification applied by freeze branding.

(4) If the facsimile, the description, or the application does not comply with the requirements of this section, the brand committee shall not record such brand as requested but shall return the recording fee to the forwarding person. The power of examination and rejection is vested in the brand committee, and if the brand committee determines that the application for a visual brand falls within the category set out in subdivision (2)(e) of this section, it shall decide whether or not a recorded brand shall be issued. The brand committee shall make such examination as promptly as possible. If the brand is recorded, the ownership vests from the date of filing of the application.

(5) The brand committee may by rule and regulation provide for the use of approved nonvisual identifiers for purposes of enrolling cattle identified by such method of livestock identification. Such method of livestock identification shall be approved only if it functions as satisfactory evidence of ownership for the purpose of enrollment of cattle and for electronic inspection authorized under section 54-1,108. Before approving any nonvisual identifier, the brand committee shall consider the degree to which such method may be susceptible to error, failure, or fraudulent alteration. Any rule or regulation shall be adopted and promulgated only after public hearing conducted in compliance with the Administrative Procedure Act.

**Source:** Laws 1999, LB 778, § 30; Laws 2000, LB 213, § 5; Laws 2002, LB 589, § 3; Laws 2005, LB 441, § 1; Laws 2021, LB572, § 18.  
Effective date August 28, 2021.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

Brand on livestock is presumptive evidence of ownership.  
*Whiteside v. Whiteside*, 159 Neb. 362, 67 N.W.2d 141 (1954).

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

(1) A recorded brand is the property of the person causing such record to be made and is subject to sale, assignment, transfer, devise, and descent as personal property. Any instrument of writing evidencing the sale, assignment, or transfer of a recorded brand shall be effective upon its recording with the Nebraska Brand Committee. No such instrument shall be accepted for recording if the brand committee has been duly notified of the existence of a lien or security interest against livestock owned or thereafter acquired by the owner of such brand by the holder of such lien or security interest. Written notification from the holder of such lien or security interest that the lien or security interest

has been satisfied or consent from the holder of such lien or security interest shall be required in order for the brand committee to accept for recording an instrument selling, assigning, or transferring such recorded brand. Except as provided in subsection (2) of this section, the fee for recording such an instrument shall be established by the brand committee and shall not be more than forty dollars. Such instrument shall give notice to all third persons of the matter recorded in the instrument and shall be acknowledged by a notary public or any other officer qualified under law to administer oaths.

(2) The owner of a recorded brand may lease the brand to another person upon compliance with this subsection and subject to the approval of the brand committee. The lessee shall pay a filing fee established by the brand committee not to exceed one hundred dollars. The leased recorded brand may expire as agreed in the lease, but in no event shall such leased recorded brand exceed the original expiration date.

**Source:** Laws 1999, LB 778, § 31; Laws 2002, LB 589, § 4; Laws 2009, LB142, § 1; Laws 2017, LB600, § 7.

**54-1,101 Recorded brand; owner; copies of record.**

The owner of a recorded brand is entitled to one certified copy of the record of such brand from the Nebraska Brand Committee without charge. Additional certified copies of the record may be obtained by anyone upon the payment of one dollar for each copy.

Copies of any other document of the brand committee may be requested, and a fee of one dollar shall be collected for each page copied. Only personnel authorized by the brand committee shall make copies and collect such fees. The party requesting the copies is responsible for payment of the fee and shall reimburse the brand committee for the research time necessary to furnish the requested documents at a rate of not less than twenty nor more than forty dollars per hour of research time. The rate shall be reviewed and set annually by the brand committee.

**Source:** Laws 1999, LB 778, § 32; Laws 2021, LB572, § 19.  
Effective date August 28, 2021.

**54-1,102 Recorded brand; use; expiration date; renewal fee; expired brand; reinstated.**

(1) A recorded brand may be applied by its owner until its expiration date.

(2) On and after January 1, 1994, the expiration date of a recorded brand is the last day of the calendar quarter of the renewal year as designated by the Nebraska Brand Committee in the records of the brand committee.

(3) The brand committee shall notify every owner of a recorded brand of its expiration date at least sixty days prior to the expiration date, and the owner of the recorded brand shall pay a renewal fee established by the brand committee which shall not be more than two hundred dollars and furnish such other information as may be required by the brand committee. The renewal fee is due and payable on or before the expiration date and renews a recorded brand for a period of four years regardless of the number of locations on one side of an animal on which the brand is recorded. If any owner fails, refuses, or neglects to pay the renewal fee by the expiration date, the brand shall expire and be forfeited.

(4) The brand committee has the authority to hold an expired brand for one year following the date of expiration. An expired brand may be reinstated by the same owner during such one-year period upon return of a brand application form and payment of the recording fee and research fee for such brand established by the brand committee under section 54-199 plus a penalty of five dollars for each month or part of a month which has passed since the date of expiration. A properly reinstated brand may be transferred to another person during such one-year period upon completion of a transfer form, with a notarized bill of sale signed by the prior owner attached to such transfer form.

**Source:** Laws 1999, LB 778, § 33; Laws 2002, LB 589, § 5; Laws 2021, LB572, § 20.

Effective date August 28, 2021.

**54-1,103 Reserved brands; use.**

(1) Cattle brands consisting of alphabetical letters A through Z, and numbers 1, 2, 3, 4, 5, 6, 7, 8, and 9 on the left or right jaw are reserved for assignment by the brand recorder, as designated by the Nebraska Brand Committee. The brand recorder shall not assign such brands to any person in the State of Nebraska unless authorized by the brand committee, and it shall be unlawful for any person to use such brands except as provided in subsection (2) of this section.

(2) Every person when spaying heifers, upon request of the owner thereof, shall brand such heifers with the alphabetical letter O on the left jaw and furnish the owner with a certificate that all heifers so branded have been properly spayed by a licensed veterinarian. Permission may be granted by the brand committee to state and federal animal disease control agencies to require the use of the letters F, V, B, S, and T and an open-end spade on either the right or left jaw of cattle in a manner consistent with animal disease control laws.

**Source:** Laws 1999, LB 778, § 34.

**54-1,104 Brand assigned to committee.**

There is a recorded brand consisting of the alphabetical letter N on the entire right and left sides which is assigned to the Nebraska Brand Committee to be used only by authorized personnel of the brand committee to permanently identify livestock which are suspected of having been stolen and may be used as evidence in any court proceeding. It shall in no way signify that the brand committee (1) is the owner of livestock so branded or (2) claims ownership in any livestock carrying such brand. It shall only be construed and intended that livestock so branded are evidence or portions of evidence seized relative to an alleged theft of livestock.

**Source:** Laws 1999, LB 778, § 35.

**54-1,105 Brands; distinction requirements.**

(1) Cattle branded with a Nebraska-recorded visual brand shall be branded so that the recorded brand of the owner shows distinctly.

(2) If the owners of recorded brands which conflict with or closely resemble each other maintain their herds in close proximity to each other, the Nebraska Brand Committee has the authority to decide, after hearing as to which at least



ten days' written notice has been given, any dispute arising therefrom and to direct such change or changes in the position or positions where such recorded brand or brands are to be placed as will remove any confusion that might result from such conflict or close resemblance.

**Source:** Laws 1999, LB 778, § 36; Laws 2002, LB 589, § 6; Laws 2017, LB600, § 8.

**54-1,106 Grazing livestock; requirements.**

A person who brings livestock into any county of this state for grazing purposes which are already branded shall provide the Nebraska Brand Committee with a statement of the brands of such livestock. Failure to comply with this section renders the violating person liable for all damages resulting from such failure.

**Source:** Laws 1999, LB 778, § 37.

**54-1,107 Recorded brand; evidentiary effect.**

A recorded brand is prima facie evidence of ownership of livestock and is admissible into evidence in any court in this state if the brand meets the requirements of and is recorded as provided in section 54-199. Other documentary evidence such as bills of sale or certificates of brand clearance transferring title from an owner to another party may also be introduced as evidence of livestock ownership in any court in this state. The recording of instruments of writing evidencing the sale, assignment, or transfer of a recorded brand gives notice to all third persons of the matter recorded, and certified copies are admissible in evidence without further foundation. In all suits at law or in equity, in any criminal proceedings, or when determining the ownership of estrays wherein the title to livestock is an issue, the certified copy of the record of a recorded brand or instrument of writing evidencing sale, assignment, or transfer of a recorded brand is prima facie evidence of the ownership of such livestock by the person possessing such livestock.

**Source:** Laws 1999, LB 778, § 38.

"Prima facie evidence of ownership" means that in the absence of other evidence, proof of ownership of the brand is sufficient to constitute a prima facie case which will withstand a motion for a directed verdict on that issue. *Broken Bow Prod. Credit Assn. v. Western Iowa Farms*, 232 Neb. 357, 440 N.W.2d 480 (1989).

Ownership of brand is prima facie evidence of ownership of animal. *Bush v. Kramer*, 185 Neb. 1, 173 N.W.2d 367 (1969).

Brand upon cattle is prima facie evidence of title. *Coomes v. Drinkwalter*, 181 Neb. 450, 149 N.W.2d 60 (1967).

Registration of brand in decedent's name raised prima facie presumption of ownership of branded cattle. *Whiteside v. Whiteside*, 159 Neb. 362, 67 N.W.2d 141 (1954).

Brand on livestock is only prima facie evidence of ownership which may be rebutted. *Bendfeldt v. Lewis*, 149 Neb. 107, 30 N.W.2d 293 (1948).

A brand on livestock is only prima facie evidence of ownership which may be rebutted. *Heritage Bank v. Kasson*, 22 Neb. App. 401, 853 N.W.2d 868 (2014).

Evidence of brands, and that defendant claimed title, held to support findings that cattle delivered to sale barn were those described in financing statement and government was entitled to recover proceeds to apply on secured loan by Farmers Home Administration. *United States v. Pirnie*, 339 F.Supp. 702 (D. Neb. 1972).

**54-1,108 Physical inspections; when required; surcharge; fees; mileage; electronic inspection; when permitted; fees; procedures; report; reinspection; when.**

(1)(a) All physical inspections for brands provided for in the Livestock Brand Act or section 54-415 shall be from sunrise to sundown or during such other hours and under such conditions as the Nebraska Brand Committee determines. The brand committee shall assess a fifty-dollar late notice surcharge if a request for a physical inspection is made less than forty-eight hours prior to the date of inspection.

(b) A physical inspection shall be required when brands applied by hot iron or freeze branding methods are the exclusive means of ownership identification and in all other cases that do not qualify for electronic inspection as provided in subsection (2) of this section.

(c) Beginning October 1, 2021, a physical inspection fee of eighty-five cents per head until June 30, 2023, and beginning July 1, 2023, a fee established by the Nebraska Brand Committee, of not more than one dollar and ten cents per head shall be charged for all cattle inspected in accordance with the Livestock Brand Act or section 54-415, inspected within the brand inspection area or brand inspection service area by court order, inspected at the request of any bank, credit agency, or lending institution with a legal or financial interest in such cattle, or inspected at the request of a neighboring livestock owner with missing cattle. The inspection fee for court-ordered inspections shall be paid from the proceeds of the sale of such cattle if ordered by the court or by either party as the court directs. For other inspections, the person requesting the inspection of such cattle is responsible for the inspection fee. Brand inspections requested by either a purchaser or seller of cattle located within the brand inspection service area shall be provided upon the same terms and charges as brand inspections performed within the brand inspection area. If stray cattle are identified as a result of the inspection, such cattle shall be processed in the manner provided by section 54-415.

(d) The actual mileage incurred by the inspector to perform a physical inspection shall be paid by the party requesting inspection and paid at the rate established by the Department of Administrative Services pursuant to section 81-1176.

(e) For physical inspections performed outside of the brand inspection area that are not provided for in subdivision (c) of this subsection, the fee shall be the inspection fee established in such subdivision plus a fee to cover the actual expense of performing the inspection, including mileage at the rate established by the Department of Administrative Services and an hourly rate, not to exceed thirty dollars per hour, for the travel and inspection time incurred by the brand committee to perform such inspection. The brand committee shall charge and collect the actual expense fee. Such fee shall apply to inspections performed outside the brand inspection area as part of an investigation into known or alleged violations of the Livestock Brand Act and shall be charged against the person committing the violation.

(2)(a) The brand committee may provide for electronic inspection of enrolled cattle identified by approved nonvisual identifiers pursuant to subsection (5) of section 54-199. The brand committee shall establish procedures for enrollment of such cattle with the brand committee which shall include providing acceptable certification or evidence of ownership. Electronic inspection shall not require agency employees to be present, except that random audits shall occur.

(b) Beginning October 1, 2021, an electronic inspection fee not to exceed eighty-five cents per head until June 30, 2023, and beginning July 1, 2023, a fee established by the brand committee of not more than one dollar and ten cents per head shall be charged for all cattle subjected to electronic inspection in accordance with the Livestock Brand Act or section 54-415.

(c) A certified bill of sale for sale of calves shall be provided to qualified dairies once the required information is electronically transferred to the brand

committee on calves under thirty days of age. The fee shall be the same as for an electronic inspection under subdivision (2)(b) of this section.

(d) A certified transportation permit shall be provided to qualified dairies after the required information is electronically transferred to the brand committee on calves under thirty days of age which are moved out of the inspection area. The fee shall be the same as for an electronic inspection under subdivision (2)(b) of this section.

(e) On or before December 1, 2021, the brand committee shall report to the Legislature any actions taken or necessary for implementing electronic inspection authorized by this subsection, including personnel and other resources utilized to support electronic inspection, how the brand committee's information technology capabilities are utilized to support electronic inspection, a listing of approved nonvisual identifiers, the requirements for enrolling cattle identified by approved nonvisual identifiers, current and anticipated utilization of electronic inspection by the livestock industry, and the fees required to recover costs of performing electronic inspection.

(3) Any person who has reason to believe that cattle were shipped erroneously due to an inspection error during a brand inspection may request a reinspection. The person making such request shall be responsible for the expenses incurred as a result of the reinspection unless the results of the reinspection substantiate the claim of inspection error, in which case the brand committee shall be responsible for the reinspection expenses.

**Source:** Laws 1999, LB 778, § 39; Laws 2002, LB 589, § 7; Laws 2005, LB 441, § 2; Laws 2011, LB181, § 1; Laws 2014, LB768, § 5; Laws 2015, LB85, § 1; Laws 2021, LB572, § 21.  
Effective date August 28, 2021.

#### **54-1,109 Brand inspection area; designation.**

The brand inspection area of Nebraska consists of the following land area of counties and parts thereof: Arthur, Banner, Blaine, Box Butte, Boyd, Brown, Buffalo, Chase, Cherry, Cheyenne, Custer, Dawes, Dawson, Deuel, Dundy, Franklin, Frontier, part of the south half of section 1, township 3 north, range 21, on railroad right-of-way in the west part of Oxford Town called Burlington addition in Furnas, Garden, Garfield, Gosper, Grant, Greeley, all of lots 1, 7, and 8 in block 48 in original town of Grand Island, and all of the southeast quarter lying south of the Union Pacific Railroad Company's right-of-way in section 24, township 11 north, range 10, in Hall, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Kearney, Keith, Keya Paha, Kimball, all of Knox except Eastern, Dolphin, Dowling, Columbia, Morton, Peoria, Addison, Herrick, Frankfort, and Lincoln townships, Lincoln, Logan, Loup, McPherson, Morrill, Perkins, Phelps, Red Willow, Rock, Scotts Bluff, Sheridan, Sherman, Sioux, Thomas, Valley, the existing livestock auction markets in Blue Hill, all of lots 1 to 6, and lots 7 and 8, except twenty-two feet of the east side of lot 8, all in block 6, original town of Blue Hill, and Red Cloud, part of lot A, Roats subdivision to Red Cloud, lots 1 and 2 and the south one-half of block 32 in original town of Red Cloud, and all of annex lot 21, Red Cloud, in Webster, and all of Wheeler.

**Source:** Laws 1999, LB 778, § 40.

**54-1,110 Brand inspection area; brand inspection requirements; violation; penalty.**

(1) Except as provided in subsections (2) and (3) of this section, no person shall move, in any manner, cattle from a point within the brand inspection area to a point outside the brand inspection area unless such cattle first have a brand inspection by the Nebraska Brand Committee and a certificate of inspection is issued. A copy of such certificate shall accompany the cattle and shall be retained by all persons moving such cattle as a permanent record.

(2) Cattle in a registered feedlot registered under sections 54-1,120 to 54-1,122 are not subject to the brand inspection of subsection (1) of this section. Possession by the shipper or trucker of a shipping certificate from the registered feedlot constitutes compliance if the cattle being shipped are as represented on such shipping certificate.

(3) If the line designating the brand inspection area divides a farm or ranch or lies between noncontiguous parcels of land which are owned or operated by the same cattle owner or owners, a permit may be issued, at the discretion of the Nebraska Brand Committee, to the owner or owners of cattle on such farm, ranch, or parcels of land to move the cattle in and out of the brand inspection area without inspection. If the line designating the brand inspection area lies between a farm or ranch and nearby veterinary medical facilities, a permit may be issued, at the discretion of the brand committee, to the owner or owners of cattle on such farm or ranch to move the cattle in and out of the brand inspection area without inspection to obtain care from the veterinary medical facilities. The brand committee shall issue initial permits only after receiving an application which includes an application fee established by the brand committee which shall not be more than fifteen dollars. The brand committee shall mail all current permitholders an annual renewal notice, for January 1 renewal, which requires a renewal fee established by the brand committee which shall not be more than fifty dollars. If the permit conditions still exist, the cattle owner or owners may renew the permit.

(4) No person shall sell any cattle knowing that the cattle are to be moved, in any manner, in violation of this section. Proof of shipment or removal of the cattle from the brand inspection area by the purchaser or his or her agent is prima facie proof of knowledge that sale was had for removal from the brand inspection area.

(5) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county of origin of the cattle or any other county through which the cattle were moved from the brand inspection area.

**Source:** Laws 1999, LB 778, § 41; Laws 2000, LB 213, § 6; Laws 2002, LB 589, § 8; Laws 2014, LB768, § 6; Laws 2017, LB600, § 9; Laws 2021, LB572, § 22.  
Effective date August 28, 2021.

Brand Inspection Act is not special legislation and is constitutional. *Satterfield v. State*, 172 Neb. 275, 109 N.W.2d 415 (1961).

**54-1,111 Brand inspection area; sale or trade of cattle; requirements; violation; penalty.**

(1) Except as provided in subsection (2) of this section, no person shall sell or trade any cattle located within the brand inspection area, nor shall any person buy or purchase any such cattle unless the cattle have been inspected for evidence of ownership and a certificate of inspection or brand clearance has been issued by the Nebraska Brand Committee. Any person selling such cattle shall present to the brand inspector a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership which shall be filed with the original certificate of inspection in the records of the brand committee. Any time a brand inspection is required by law, a brand investigator or brand inspector may transfer evidence of ownership of such cattle from a seller to a purchaser by issuing a certificate of inspection.

(2) A brand inspection is not required:

(a) For cattle of a registered feedlot registered under sections 54-1,120 to 54-1,122 shipped for direct slaughter or sale on any terminal market;

(b) For cattle that are:

(i) Transferred to a family corporation when all the shares of capital stock of the corporation are owned by the husband, wife, children, or grandchildren of the transferor and there is no consideration for the transfer other than the issuance of stock of the corporation to such family members; or

(ii) Transferred to a limited liability company in which membership is limited to the husband, wife, children, or grandchildren of the transferor and there is no consideration paid for the transfer other than a membership interest in the limited liability company;

(c) When the change of ownership of cattle is a change in form only and the surviving interests are in the exact proportion as the original interests of ownership. When there is a change of ownership described in subdivision (2)(b) or (c) of this section, an affidavit, on a form prescribed by the Nebraska Brand Committee, signed by the transferor and stating the nature of the transfer and the number of cattle involved and the brands presently on the cattle, shall be filed with the brand committee;

(d) For cattle sold or purchased for educational or exhibition purposes or other recognized youth activities if a properly executed bill of sale is exchanged and presented upon demand. Educational or exhibition purpose means cattle sold or purchased for the purpose of being fed, bred, managed, or tended in a program designed to demonstrate or instruct in the use of various feed rations, the selection of individuals of certain physical conformation or breeds, the measurement and recording of rate of gain in weight or fat content of meat or milk produced, or the preparation of cattle for the purpose of exhibition or for judging as to quality and conformation;

(e) For calves under the age of thirty days sold or purchased at private treaty if a bill of sale is exchanged and presented upon demand; and

(f) For seedstock cattle raised by the seller and individually registered with an organized breed association if a properly executed bill of sale is exchanged and presented upon demand.

(3) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars

per head for each offense. Violations shall be charged in the county in which the offense occurred.

**Source:** Laws 1999, LB 778, § 42; Laws 2000, LB 213, § 7; Laws 2014, LB768, § 7; Laws 2017, LB600, § 10; Laws 2021, LB572, § 23.  
Effective date August 28, 2021.

**54-1,112 Brand inspection area; slaughter and hide records; violation; penalty.**

(1) Any person located within the brand inspection area who slaughters or has cattle slaughtered for sale or distribution shall keep, in a book for that purpose, a true and faithful record of all cattle purchased and slaughtered. Such record shall also contain a description of the marks, brands, age, weight, and color of all cattle slaughtered. Such record shall contain the date when the cattle were slaughtered and a notation which sets forth by whom the cattle were raised or from whom purchased.

(2) All persons who purchase hides shall keep a record of all hides of cattle purchased by them, which record shall state the name or names of the person or persons from whom purchased, their place of residence, the date of purchase, and all marks and brands on the hide, and the record shall at all times be open for inspection by any peace officer.

(3) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

**Source:** Laws 1999, LB 778, § 43; Laws 2021, LB572, § 24.  
Effective date August 28, 2021.

**54-1,113 Sale, trade, use, or consumption of beef or veal; requirements; violation; penalty.**

(1)(a) Inside of the brand inspection area, no person shall sell or trade or offer for sale or trade the carcass of a beef or veal, or any portion thereof, including the hide of such carcass, unless a certificate of inspection is secured from a brand inspector. Such person shall exhibit the certificate of inspection upon the demand of any person.

(b) Outside of the brand inspection area, no person shall sell or offer for sale, except as a butcher bonded under section 54-1,114, the carcass of a beef or veal, or any portion thereof, without first exhibiting the intact hide of the same and exposing the brand upon the hide, if any, to the purchaser. A person selling or offering for sale any such carcass of beef or veal shall preserve the hide of the same for a period of fifteen days unless a certificate of inspection is secured from a brand inspector, and such person shall exhibit the certificate of inspection upon the demand of any person.

(2) No person shall kill for his, her, or its own use and consumption any cattle for beef or veal without preserving the hide of such animal intact with a complete unskinned tail attached thereto for a period of not less than fifteen days unless a certificate of inspection is secured from a brand inspector, and such hide shall be presented for inspection upon demand of any person.

(3) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

**Source:** Laws 1999, LB 778, § 44; Laws 2021, LB572, § 25.  
Effective date August 28, 2021.

**54-1,114 Slaughter of cattle; brand inspection requirements; violation; penalty.**

(1) Except as provided in subsections (2) and (3) of this section, no butcher, packer, or vendor engaged in the slaughter of cattle within the brand inspection area shall kill or otherwise dispose of any cattle until a brand inspection is performed by the Nebraska Brand Committee on the premises where such slaughter is to take place and until a certificate of inspection from the brand committee is filed and is made a part of such operator's permanent records. All such certificates of inspection shall, upon demand, be displayed to any peace officer or to the brand committee at any time.

(2) If cattle requiring inspection under this section are to be slaughtered and are purchased by such butcher, packer, or vendor at a regularly brand-inspected sales barn and are destined for direct slaughter upon reaching their destination, the brand inspector at such sales barn shall be advised that such cattle are destined for direct slaughter. The brand inspector shall then issue a certificate of inspection for the cattle, such certificate to indicate that the cattle are to go to direct slaughter and that the cattle are not to be retained by such butcher, packer, or vendor for longer than ninety-six hours prior to slaughter. Cattle inspected at the point of origin by a brand inspector shall not require an additional brand inspection upon reaching a destination within the state if the certificate of inspection designates that the cattle are to go directly for slaughter and not to be retained by such butcher, packer, or vendor longer than ninety-six hours prior to slaughter.

(3) If cattle required to be inspected under this section are offered for slaughter and satisfactory evidence of ownership has not been provided, the butcher, packer, or vendor may, with the approval of the brand inspector, slaughter the cattle and hold the meat until such time as satisfactory evidence of ownership is provided to the brand committee. The brand inspector shall provide the butcher, packer, or vendor with an official notice advising the operator not to release the meat until authorized by the brand committee. The brand committee may provide for a cash bond to be posted with the executive director of the brand committee so that the meat may be released prior to the establishment of satisfactory evidence of ownership. The amount of the bond shall be set at the approximate value of the cattle. When satisfactory evidence of ownership has been provided by the person offering the cattle for slaughter, the executive director shall authorize the release of the meat or the return of the bond.

(4) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars

per head for each offense. Violations shall be charged in the county in which the offense occurred.

**Source:** Laws 1999, LB 778, § 45; Laws 2021, LB572, § 26.  
Effective date August 28, 2021.

**54-1,115 Livestock transportation authority form; requirements; violation; penalty.**

(1) Any person, other than the owner or the owner's employee, using a motor vehicle or trailer to transport livestock or carcasses over any land within the State of Nebraska not owned or rented by such person or who is so transporting such livestock upon a highway, public street, or thoroughfare within the State of Nebraska shall have in his or her possession a livestock transportation authority form, certificate of inspection, or shipping certificate from a registered feedlot, authorizing such movement as to each head of livestock transported by such vehicle.

(2) A livestock transportation authority form shall be in writing and shall state the name of the owner of the livestock, the owner's post office address, the place from which the livestock are being moved, including the name of the ranch, if any, the destination, the name and address of the carrier, the license number and make of motor vehicle to which consigned, together with the number of livestock and a description thereof including kind, sex, breed, color, and marks, if any, and in the case of livestock shipments originating within the brand inspection area, the brands, if there are any. The authority form shall be signed by the owner of the livestock or the owner's authorized agent.

(3) Any peace officer, based upon probable cause to question the ownership of the livestock being transported, may stop a motor vehicle or motor vehicle and trailer and request exhibition of any authority form or certificate required by this section.

(4) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

**Source:** Laws 1999, LB 778, § 46; Laws 2000, LB 213, § 8; Laws 2017, LB600, § 11; Laws 2021, LB572, § 27.  
Effective date August 28, 2021.

**Cross References**

Duty to care for livestock, violation, penalty, see section 54-7,104.

**54-1,116 Satisfactory evidence of ownership; violation; penalty.**

(1) All livestock sold or otherwise disposed of shall be accompanied by a properly executed bill of sale in writing or, for cattle, a certificate of inspection. All owners of or persons possessing livestock have a duty to exhibit, upon request of any person, the bill of sale or other satisfactory evidence of ownership of the livestock.

(2) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars



per head for each offense. Violations shall be charged in the county in which the offense occurred.

**Source:** Laws 1999, LB 778, § 47; Laws 2021, LB572, § 28.  
Effective date August 28, 2021.

**54-1,117 Brand inspection area; intermingling of livestock; effect.**

No consignment of livestock within, entering into, or passing through the brand inspection area, after having been inspected by a brand inspector, shall be permitted to intermingle with any other livestock located within the brand inspection area. If, at any time after brand inspection has been performed or a certificate of inspection has been issued on any shipment of livestock, the livestock become intermingled with other livestock located within the brand inspection area, the original brand inspection is void and before further movement of the livestock out of the brand inspection area may be made, reinspection for identification of brands is required. A brand inspector may require reinspection if he or she has reason to believe a consignment of livestock has become intermingled.

**Source:** Laws 1999, LB 778, § 48.

**54-1,118 Livestock; questions of ownership; procedure.**

If any livestock inspected under the Livestock Brand Act or section 54-415 is unbranded or bears a brand or brands in addition to, or other than, the recorded brand or brands of the shipper or seller, then the shipper or seller may be required to establish his or her ownership of such livestock by exhibiting to the Nebraska Brand Committee a bill of sale to such livestock or by other satisfactory evidence of ownership. If ownership of the livestock is not established, the livestock may be sold, and the selling agent who sells such livestock shall hold the proceeds of the sale. If any shipper or seller who has offered such livestock for sale refuses to accept the bids offered, ownership must be established, or a cash bond posted with the selling agent in an amount equal to the approximate value of the livestock and payable to the brand committee, before such livestock may be removed from the premises. When ownership has been established the cash bond shall be returned to the person who or which posted it.

The shipper or seller of the livestock is required to establish ownership of such livestock within sixty days after its sale. If such shipper or seller establishes ownership of such livestock, the Nebraska Brand Committee shall order the selling agent of such livestock to pay the proceeds of sale to the shipper or seller. If such shipper or seller fails to establish ownership within the sixty days, such livestock shall be considered an estray and the Nebraska Brand Committee shall order the selling agent to pay the proceeds of sale over to the brand committee. All funds that the brand committee receives from the sale of any estray shall be placed in a separate custodial fund known as the estray fund. The brand committee shall determine the ownership of estrays that originate within the brand inspection area. Such funds shall be disposed of in the manner provided in section 54-415.

**Source:** Laws 1999, LB 778, § 49.

Shipper may be required to establish ownership. *Coomes v. Drinkwalter*, 181 Neb. 450, 149 N.W.2d 60 (1967).

**54-1,119 Open market; designation; brand inspection requirements.**

(1) Any livestock market, whether within or outside of the state, or any meat packing plant which maintains brand inspection under the supervision of the Nebraska Brand Committee and under such rules and regulations as are specified by the United States Department of Agriculture, may be designated by the brand committee as an open market.

(2) When cattle originating from within the brand inspection area are consigned for sale to any commission company at any open market designated as such by the Nebraska Brand Committee where brand inspection is maintained, no brand inspection is required at the point of origin but is required at the point of destination unless the point of origin is a registered feedlot. If cattle are consigned to a commission company at an open market, the carrier transporting the cattle shall not allow the owner, shipper, or party in charge to change the billing to any point other than the commission company at the open market designated on the original billing, unless the carrier secures from the brand committee a certificate of inspection on the cattle so consigned. Any cattle originating in a registered feedlot consigned to a commission company at any terminal market destined for direct slaughter may be shipped in accordance with rules and regulations governing registered feedlots.

(3) Until the cattle are inspected for brands on the premises by the Nebraska Brand Committee, no person shall sell or cause to be sold or offer for sale (a) any cattle at a livestock auction market located within the brand inspection area or at a farm or ranch sale located within the brand inspection area or (b) any cattle originating within the brand inspection area consigned to an open market.

**Source:** Laws 1999, LB 778, § 50; Laws 2000, LB 213, § 9; Laws 2017, LB600, § 12.

**54-1,120 Registered feedlot; application; requirements; fees; inspections; records.**

(1) Any person who operates a cattle feeding operation located within the brand inspection area may make application to the Nebraska Brand Committee for registration as a registered feedlot. The application form shall be prescribed by the brand committee and shall be made available by the executive director of the brand committee for this purpose upon written request. If the applicant is an individual, the application shall include the applicant's social security number. After the brand committee has received a properly completed application, an agent of the brand committee shall within thirty days make an investigation to determine if the following requirements are satisfied:

- (a) The operator's feedlot must be permanently fenced; and
- (b) The operator must commonly practice feeding cattle to finish for slaughter.

If the application is satisfactory, and upon payment of an initial registration fee by the applicant, the brand committee shall issue a registration number and registration certificate valid for one year unless rescinded for cause. If the registration is rescinded for cause, any registration fee shall be forfeited by the applicant. The initial fee for a registered feedlot shall be an amount for a registered feedlot having one thousand head or less capacity and an equal

amount for each additional one thousand head capacity, or part thereof, of such registered feedlot. For each subsequent year, the renewal fee for a registered feedlot shall be an amount for the first one thousand head or portion thereof of average annual inventory of cattle on feed of the registered feedlot and an equal amount for each additional one thousand head or portion thereof of average annual inventory of cattle on feed of the registered feedlot. The brand committee shall set the fee per one thousand head capacity or average annual inventory so as to correspond with the inspection fee provided under section 54-1,108. The registration fee shall be paid on an annual basis.

(2) The brand committee may adopt and promulgate rules and regulations for the operation of registered feedlots to assure that brand laws are complied with, that registered feedlot shipping certificates are available, and that proper records are maintained. Violation of sections 54-1,120 to 54-1,122 subjects the operator to revocation or suspension of the feedlot registration issued. Sections 54-1,120 to 54-1,122 shall not be construed as prohibiting the operation of nonregistered feedlots.

(3) Registered feedlots are subject to inspection at any reasonable time at the discretion of the brand committee and its authorized agents, and the operator shall show cattle purchase records or certificates of inspection to cover all cattle in his or her feedlot. Cattle having originated from such registered feedlots may from time to time, at the discretion of the committee, be subject to a spot-check inspection and audit at destination to enable the brand committee to assure satisfactory compliance with the brand laws by the registered feedlot operator.

(4) The operator of a registered feedlot shall keep cattle inventory records. A form for such purpose shall be prescribed by the brand committee. The brand committee and its employees may from time to time make spot checks and audits of the registered feedlots and the records of cattle on feed in such feedlots.

(5) The brand committee may rescind the registration of any registered feedlot operator who fails to cooperate or violates the laws or rules and regulations of the brand committee covering registered feedlots.

**Source:** Laws 1999, LB 778, § 51; Laws 2014, LB768, § 8; Laws 2021, LB572, § 29.

Effective date August 28, 2021.

**54-1,121 Registered feedlot; cattle shipment; requirements.**

Cattle sold or shipped from a registered feedlot, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119, and the seller or shipper shall bear the cost of such inspection at the regular fee.

Any other cattle shipped from a registered feedlot are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered feedlot. The shipping certificate form shall be prescribed by the Nebraska Brand Committee and shall show the registered feedlot operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered feedlot operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy

shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered feedlot operator. If a shipping certificate does not accompany a shipment of cattle from a registered feedlot to any destination where brand inspection is maintained by the brand committee, all such cattle shall be subject to a brand inspection and the inspection fees and surcharge provided under section 54-1,108 shall be charged for the service.

**Source:** Laws 1999, LB 778, § 52; Laws 2000, LB 213, § 10; Laws 2011, LB181, § 2.

**54-1,122 Registered feedlot; cattle received; requirements.**

Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered feedlot. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be subjected to physical inspection for brands by the Nebraska Brand Committee or, if applicable, subjected to electronic inspection, within a reasonable time after arrival at a registered feedlot, and the inspection fee and mileage charge, if applicable, provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

**Source:** Laws 1999, LB 778, § 53; Laws 2011, LB181, § 3; Laws 2021, LB572, § 30.  
Effective date August 28, 2021.

**54-1,122.01 Repealed. Laws 2017, LB600, § 14.**

**54-1,122.02 Repealed. Laws 2017, LB600, § 14.**

**54-1,123 Prohibited sale; violation; penalty.**

No person, other than the owner of the livestock, shall sell or offer for sale or trade or otherwise dispose of any livestock unless the person so offering has the bill of sale, a power of attorney from the owner of such livestock authorizing such sale, or other satisfactory evidence of ownership. A violation of this section is a Class III felony.

**Source:** Laws 1999, LB 778, § 54.

Bill of sale of cattle must state the statutory details required. *Coomes v. Drinkwalter*, 181 Neb. 450, 149 N.W.2d 60 (1967). Trade of livestock is not limited by this section. *Bendfeldt v. Lewis*, 149 Neb. 107, 30 N.W.2d 293 (1948).

**54-1,124 Prohibited brand; violation; penalty.**

If any person willfully and knowingly brands, marks, or causes to be branded or marked, livestock owned by another with the intent to deprive such owner of the livestock or willfully and knowingly effaces, defaces, or obliterates any mark upon any livestock owned by another with the intent to deprive such owner of the livestock, such person is guilty of a Class III felony.

**Source:** Laws 1999, LB 778, § 55.

Failure to instruct upon effect of this section was prejudicial error. *Coomes v. Drinkwalter*, 181 Neb. 450, 149 N.W.2d 60 (1967).

**54-1,124.01 Acts prohibited; penalty.**

A person commits a Class III felony if:

- (1) Such person willfully and knowingly performs or causes to be performed any act to:
  - (a) Apply, remove, damage, or alter an approved nonvisual identifier; or
  - (b) Expunge, alter, render inaccessible, or otherwise corrupt information recorded or embedded on or in an approved nonvisual identifier; and
- (2) Such conduct is done with the intent to deprive an owner of livestock or falsely assert ownership of livestock.

**Source:** Laws 2021, LB572, § 31.

Effective date August 28, 2021.

**54-1,125 False documents; violation; penalty.**

- (1) Any person who offers as evidence of ownership for any livestock sold, traded, or otherwise disposed of as provided in the Livestock Brand Act or section 54-415, any forged, altered, or otherwise falsely prepared document or form, knowing the same to be forged, altered, or otherwise falsely prepared, is guilty of the Class IV felony of criminal possession of a forged instrument as defined in section 28-604.
- (2) Any person who forges, alters, or otherwise changes in any manner any of the forms or documents which are satisfactory evidence of ownership or any other form or document required by or provided for in the Livestock Brand Act or section 54-415, is guilty of second degree forgery as defined in section 28-603, and shall be punished in accordance with such section.
- (3) Any person who knowingly misrepresents or misuses any certificate of inspection or other satisfactory evidence of ownership is guilty of a Class II misdemeanor.

**Source:** Laws 1999, LB 778, § 56.

**54-1,126 General penalty.**

Any person who violates any provision of the Livestock Brand Act is guilty of a Class II misdemeanor unless another penalty is specifically provided for such violation.

**Source:** Laws 1999, LB 778, § 57.

**54-1,127 Violations; arresting peace officer; powers.**

Whenever any person is arrested for a violation of the Livestock Brand Act or section 54-415 punishable as a misdemeanor, the arresting peace officer shall, except as otherwise provided in this section, take the name and address of such person and the license number of his or her motor vehicle. The peace officer shall issue a summons or otherwise notify him or her in writing to appear at a time and place to be specified in such summons or notice. Such time shall be at least five days after such arrest, unless the person arrested demands an earlier hearing. Such person, if he or she so desires, has a right to an immediate hearing or a hearing within twenty-four hours at a convenient hour, such hearing to be before a magistrate within the county where such offense was committed. The peace officer shall thereupon, and upon the giving by such person of his or her written promise to appear at such time and place, forthwith release him or her from custody. Any person refusing to give such

written promise to appear shall be taken immediately by the arresting peace officer before the nearest or most accessible magistrate.

**Source:** Laws 1999, LB 778, § 58.

**54-1,128 Brand with brand recorded or registered in another state; application for out-of-state brand permit; contents; fee; violation; penalty.**

(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.

(4) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

**Source:** Laws 2013, LB435, § 4; Laws 2021, LB572, § 32.

Effective date August 28, 2021.

**Cross References**

Livestock Auction Market Act, see section 54-1156.

**54-1,129 Livestock auction market or packing plant; brand inspection; election to provide.**

The owner or operator of any livestock auction market, as defined in section 54-1158, or packing plant located in any county outside the brand inspection area may voluntarily elect to provide brand inspection for all cattle brought to such livestock auction market or packing plant from within the brand inspection area upon compliance with sections 54-1,129 to 54-1,131.

**Source:** Laws 1963, c. 319, § 28, p. 972; Laws 1987, LB 450, § 9; Laws 1999, LB 778, § 76; R.S.1943, (2010), § 54-1183; Laws 2014, LB884, § 2.

**54-1,130 Livestock auction market or packing plant; election; how made.**

The election provided for by section 54-1,129 shall be made by (1) filing with the Secretary of State, in form to be prescribed by the secretary, a written notice of such election and agreement to be bound by section 54-1,131 and (2)

posting conspicuously on the premises a notice of the fact that brand inspection is provided at such livestock auction market or packing plant.

**Source:** Laws 1963, c. 319, § 29, p. 973; Laws 1987, LB 450, § 10; R.S.1943, (2010), § 54-1184; Laws 2014, LB884, § 3.

**54-1,131 Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee.**

Inspection provided for in sections 54-1,129 to 54-1,131 shall be conducted in the manner established by the Livestock Brand Act. The owner or operator making such election may be required to guarantee to the Nebraska Brand Committee that inspection fees derived from such livestock auction market or packing plant will be sufficient, in each twelve-month period, to pay the per diem and mileage of the inspectors required and that he or she will reimburse the committee for any deficit incurred in any such twelve-month period. Such guarantee shall be secured by a corporate surety bond, to be approved by the Secretary of State, in a penal sum to be established by the Nebraska Brand Committee.

**Source:** Laws 1963, c. 319, § 30, p. 973; Laws 1987, LB 450, § 11; Laws 1999, LB 778, § 77; Laws 2000, LB 213, § 11; R.S.1943, (2010), § 54-1185; Laws 2014, LB884, § 4.

**ARTICLE 2**

**LIENS**

- Section
- 54-201. Agister’s lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.
- 54-201.01. Legislative intent.
- 54-202. Transferred to section 52-1501.
- 54-203. Transferred to section 52-1502.
- 54-204. Transferred to section 52-1503.
- 54-205. Transferred to section 52-1504.
- 54-206. Transferred to section 52-1505.
- 54-207. Transferred to section 52-1506.
- 54-208. Lien for feed, feed ingredients, and related costs; perfection; financing statement; filing; enforcement; fee.
- 54-209. Lien satisfied; financing statement; termination.

**54-201 Agister’s lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.**

(1) When any person, firm, corporation, partnership, or limited liability company not provided for in subsection (2) of this section procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care, as long as the holders of any prior liens shall have agreed in writing to the contract for the feed and care of the livestock involved. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as

provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(2) When any person, firm, corporation, partnership, or limited liability company whose residence or principal place of business is located outside the State of Nebraska procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company within the State of Nebraska to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(3) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

**Source:** Terr. Laws 1867, § 1, p. 12; Laws 1889, c. 31, § 1, p. 378; R.S.1913, § 89; C.S.1922, § 97; C.S.1929, § 54-201; Laws 1935,



c. 118, § 1, p. 433; C.S.Supp.,1941, § 54-201; R.S.1943, § 54-201; Laws 1982, LB 962, § 2; Laws 1984, LB 808, § 7; Laws 1988, LB 943, § 18; Laws 1993, LB 121, § 335; Laws 1998, LB 1321, § 96; Laws 1999, LB 550, § 36; Laws 2001, LB 54, § 25; Laws 2014, LB750, § 16.

- 1. Nature of lien
- 2. Priority of lien
- 3. Miscellaneous

**1. Nature of lien**

This section provides the agister with a lien upon the stock for the agister's keeping, and the owner cannot lawfully obtain possession of the stock until the owner has paid or tendered to the agister the amount due for the feed and care. *Graff v. Burnett*, 226 Neb. 710, 414 N.W.2d 271 (1987).

Priority, as used in this section and UCC section 9-310, means first in time. *Washington County Bank v. Red Socks Stables*, 221 Neb. 300, 376 N.W.2d 782 (1985).

Subsection (1) of this section gives Nebraska agisters a first lien for services rendered to a Nebraska livestock owner if the holders of any prior liens on that livestock agree in writing to the contract for the care and feeding of that livestock. *Washington County Bank v. Red Socks Stables*, 221 Neb. 300, 376 N.W.2d 782 (1985).

Subsection (2) of this section gives Nebraska agisters a lien prior to any other liens without a written agreement to the contract for care and feeding of the livestock, if the party contracting for the agister's services is a nonresident of Nebraska. *Washington County Bank v. Red Socks Stables*, 221 Neb. 300, 376 N.W.2d 782 (1985).

This section creates a statutory agister's lien within the meaning of UCC section 9-310. *Washington County Bank v. Red Socks Stables*, 221 Neb. 300, 376 N.W.2d 782 (1985).

Caretaker has lien for care of livestock. *Stickell v. Hagerty*, 158 Neb. 34, 62 N.W.2d 107 (1954).

One who receives animals under an agreement to share in increase has an agister's lien. *Schrandt v. Young*, 62 Neb. 254, 86 N.W. 1085 (1901).

Lien arises only by contract. *Hale v. Wigton*, 20 Neb. 83, 29 N.W. 177 (1886).

**54-201.01 Legislative intent.**

The Legislature hereby recognizes and declares that the livestock industry is an integral component in the economy of this state and that the continued viability of such industry is essential to the prosperity and well-being of all citizens of this state. The Legislature further recognizes that the livestock industry of this state provides food for the state, the nation, and the world, and that the benefits of a financially sound industry are far reaching. It is hereby declared to be the purpose of sections 54-201 and 54-201.01 to afford protection to those persons involved in the care and feeding of livestock in this state by providing some security of compensation for services rendered.

**Source:** Laws 1982, LB 962, § 1.

**54-202 Transferred to section 52-1501.**

**54-203 Transferred to section 52-1502.**

**54-204 Transferred to section 52-1503.**

**2. Priority of lien**

Agister's lien under feeding contract is superior to subsequent chattel mortgage. *Hoerler v. Prey*, 125 Neb. 822, 252 N.W. 327 (1934).

Lien is superior to mortgage executed after it has attached and while property is in possession of agister. *Becker v. Brown*, 65 Neb. 264, 91 N.W. 178 (1902).

Under this section, a prior recorded chattel mortgage is superior to claim of agister for keeping animals. *State Bank of Nebraska v. Lowe*, 22 Neb. 68, 33 N.W. 482 (1887).

Lien of liveryman failing to maintain possession of horses is inferior to mortgage executed after possession is relinquished. *Marseilles Mfg. Co. v. Morgan*, 12 Neb. 66, 10 N.W. 462 (1881).

**3. Miscellaneous**

Once it is determined a person is protected by the statutory lien granted an agister, the statute will be liberally construed so its object will be effectuated. *Mousel v. Daringer*, 190 Neb. 77, 206 N.W.2d 579 (1973).

It is not necessary for agister to follow statute in foreclosure if consent of bailor is had, and under circumstances not tending to injure third parties. *Dale v. Council Bluffs Savings Bank*, 65 Neb. 692, 91 N.W. 526 (1902); reversed on rehearing, 65 Neb. 694, 94 N.W. 983 (1903).

The taking by the owner of livestock from the possession of agister without his consent does not divest his lien, and subsequent purchaser is charged with notice of the lien. *Weber Bros. v. Whetstone*, 53 Neb. 371, 73 N.W. 695 (1898).

One who cares for livestock under contract with owner has agister's lien, and owner cannot obtain possession by legal process until he has paid or tendered the full amount due. *Kroll v. Ernst*, 34 Neb. 482, 51 N.W. 1032 (1892).

Person furnishing feed and care to livestock can hold stock against owner who contracted for care until amount due is paid, but cannot hold where contract was not made with owner. *Gates v. Parrott*, 31 Neb. 581, 48 N.W. 387 (1891).

**54-205 Transferred to section 52-1504.**

**54-206 Transferred to section 52-1505.**

**54-207 Transferred to section 52-1506.**

**54-208 Lien for feed, feed ingredients, and related costs; perfection; financing statement; filing; enforcement; fee.**

When any person, firm, partnership, limited liability company, or corporation contracts or agrees with another person, firm, partnership, limited liability company, or corporation to deliver any feed or feed ingredients for any kind of livestock, the person, firm, partnership, limited liability company, or corporation so contracted or agreed with shall have a lien upon such livestock for the feed or feed ingredients and related costs incurred in the delivery of such feed or feed ingredients for the agreed-upon contract price or, in case no price has been agreed upon, for the reasonable value of such feed or feed ingredients and related delivery costs, which shall be a first, paramount, and prior lien if the holders of any prior liens have agreed in writing to the contract for the feed or feed ingredients and related delivery costs. The lien may only be enforced against the person, firm, partnership, limited liability company, or corporation who has contracted or agreed for such feed or feed ingredients and related costs incurred in the delivery of such feed or feed ingredients.

A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto:

- (1) The name and address and the social security number or federal tax identification number of the person, firm, partnership, limited liability company, or corporation claiming the lien;
- (2) The name and address and the social security number or federal tax identification number, if known, of the person, firm, partnership, limited liability company, or corporation for whom such feed or feed ingredients were delivered;
- (3) The amount due for such feed or feed ingredients and related delivery costs covered by the lien;
- (4) The place where such livestock are located;
- (5) A reasonable description of such livestock including the number and type of such livestock; and
- (6) The last date on which such feed or feed ingredients were delivered.

The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, partnership, limited liability company, or corporation for whom the feed or feed ingredients were delivered.

Such lien shall attach and have priority as of the date of the filing if filed in the manner provided in this section. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code.

The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

Nothing in this section shall be construed to amend or repeal section 54-201 relating to agisters' liens.

**Source:** Laws 1984, LB 1064, § 1; Laws 1988, LB 943, § 19; Laws 1993, LB 121, § 336; Laws 1998, LB 1321, § 97; Laws 1999, LB 550, § 37; Laws 2001, LB 54, § 26; Laws 2014, LB750, § 17.

#### **54-209 Lien satisfied; financing statement; termination.**

When a lien created under section 54-201 or 54-208 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 16; Laws 1988, LB 943, § 20; Laws 1999, LB 550, § 38; Laws 2001, LB 54, § 27; Laws 2014, LB750, § 18.

### **ARTICLE 3**

#### **HERD LAWS**

##### Section

- 54-301. Herd laws; stock grower, cattle drover, defined.
- 54-302. Driving off another's livestock; penalty.
- 54-303. Herd laws; actions; proof of ownership.
- 54-304. Male animal running at large; liability of owner.
- 54-305. Cattle drover; duty to prevent trespassing animals.
- 54-306. Cattle drover; trespassing; penalty; liability for damages.
- 54-307. Cattle drover; driving off another's livestock; liability.
- 54-308. Cattle drover; mixing of cattle; duty to separate; penalty.
- 54-309. Cattle or sheep; hides; removal by other than owner; prohibited; exception.
- 54-310. Herd laws; violations; rewards; authorized.
- 54-311. Wells and pitfalls; prohibited acts.
- 54-312. Repealed. Laws 2003, LB 245, § 19.
- 54-313. Repealed. Laws 2003, LB 245, § 19.
- 54-314. Repealed. Laws 2003, LB 245, § 19.
- 54-315. Wells and pitfalls; violation; penalty.

#### **54-301 Herd laws; stock grower, cattle drover, defined.**

Every person who shall keep neat cattle, horses, mules, sheep, or goats, for their growth or increase within the state, shall be deemed a stock grower. Any person who shall drive or bring neat cattle into or through this state shall be deemed a cattle drover.

**Source:** Laws 1879, § 1, p. 67; R.S.1913, § 96; C.S.1922, § 104; C.S.1929, § 54-301; R.S.1943, § 54-301.

#### **54-302 Driving off another's livestock; penalty.**

Any cattle drover, or his employee, who shall drive off any neat cattle, horses, mules, or sheep belonging to another person, intentionally or through neglect, shall be guilty of a Class V misdemeanor.

**Source:** Laws 1879, § 2, p. 67; R.S.1913, § 97; C.S.1922, § 105; C.S.1929, § 54-302; R.S.1943, § 54-302; Laws 1977, LB 39, § 17.

**54-303 Herd laws; actions; proof of ownership.**

In any indictment or complaint under sections 54-301 to 54-310, the description of any kind or class of neat cattle shall be deemed sufficient if described as cattle; and the proof of brand shall be deemed to be prima facie evidence of ownership of such stock.

**Source:** Laws 1879, § 3, p. 68; R.S.1913, § 98; C.S.1922, § 106; C.S.1929, § 54-303; R.S.1943, § 54-303.

**54-304 Male animal running at large; liability of owner.**

The owner of any stallion, jack, bull, buck, or boar shall restrain the same, and any person may take possession of any such animal running at large in the county in which such person resides, or in which he or she occupies or uses real estate. He or she shall give notice thereof to the sheriff or any constable in the county in which such animal is taken, who shall give notice to the owner of such animal, if known to him or her, by delivering a written notice to the owner, or leaving the same at his or her usual place of abode, giving a description of the animal so taken. If such owner does not appear within ten days after such notice to claim his or her property and pay costs and damages if any, then the sheriff or constable shall sell the animal so taken, at public auction to the highest bidder for cash, having given twenty days' notice of the time and place of sale, with a description of the property, by posting such notice in three public places in the township or precinct in which such animal was found at large. Out of the proceeds of such sale he or she shall pay all costs and any damages done by such animal, to be ascertained and determined by him or her, and the sheriff or constable shall pay the remainder, if any, into the county treasury for the use of the county. If legal proof is made to the county board by the owner of such animal of a right thereto at any time within one year of the sale, the county board shall order the proper amount to be paid to the owner by its warrant drawn for that purpose. If the owner, or any person for him or her, on or before the day of sale shall pay the costs thus far made and all damages, to be determined by the sheriff or constable if the parties cannot agree, and make satisfactory proof of ownership, the sheriff or constable shall release the animal to him or her. This remedy shall not be construed as a bar to any suit for damages sustained and not covered by the proceeds of the sale as hereinbefore provided.

**Source:** Laws 1879, § 4, p. 68; Laws 1901, c. 3, § 1, p. 45; R.S.1913, § 99; C.S.1922, § 107; C.S.1929, § 54-304; R.S.1943, § 54-304; Laws 1996, LB 299, § 25.

The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. *Foland v. Malander*, 222 Neb. 1, 381 N.W.2d 914 (1986).

The duty imposed by this statute, unlike that of section 54-401, RRS1943, is not restricted to cultivated lands. *Fuchser v. Jacobson*, 205 Neb. 786, 290 N.W.2d 449 (1980).

**54-305 Cattle drover; duty to prevent trespassing animals.**

Any person owning or having charge of any drove of cattle, horses or sheep, numbering one head or more, who shall drive the same into or through any county of Nebraska of which the owner is not a resident, or landowner, or stock grower, and when the land in said county is occupied, it shall be the duty of such owner or person in charge of such horses, cattle or sheep to prevent the same from mixing with the cattle, horses or sheep belonging to the occupiers. The owner shall also prevent the drove from trespassing on such land as may be the property of the actual occupier, or may be held by him under a

preemption, or a leasehold right, and used by him for the grazing of animals, growing hay or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops.

**Source:** Laws 1879, § 5, p. 68; R.S.1913, § 100; C.S.1922, § 108; C.S. 1929, § 54-305; R.S.1943, § 54-305.

The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. *Foland v. Malander*, 222 Neb. 1, 381 N.W.2d 914 (1986).

**54-306 Cattle drover; trespassing; penalty; liability for damages.**

If any owner or person in charge of any drove of cattle, horses or sheep shall willfully, carelessly or negligently injure any resident within the state by driving such drove from the public highways and herding the same on the lands occupied and improved by persons in possession of the same, he shall be deemed guilty of a Class V misdemeanor, and shall be liable for such damages as may be done to the property.

**Source:** Laws 1879, § 5, p. 69; R.S.1913, § 100; C.S.1922, § 108; C.S. 1929, § 54-305; R.S.1943, § 54-306; Laws 1977, LB 39, § 18.

**54-307 Cattle drover; driving off another's livestock; liability.**

When the stock of any person shall be driven off its range within Nebraska against his will by the drovers of any drove, and the same shall be found in such drove, every person engaged as drover of such drove shall be liable for damages to the party injured to the amount of the full value of the animal for each head so driven off, together with all costs accruing in the trial of the cause, and the herd of stock shall be liable for the same, or a sufficient number to cover all damages and costs.

**Source:** Laws 1879, § 6, p. 69; R.S.1913, § 101; C.S.1922, § 109; C.S. 1929, § 54-306; R.S.1943, § 54-307.

**54-308 Cattle drover; mixing of cattle; duty to separate; penalty.**

When the stock of any resident of the State of Nebraska shall mix with any drove of any animals, it shall be the duty of the drover or drovers, or person in charge of such drove, to cut out and separate such stock from such droves immediately. Every person, either owner or drover, or otherwise connected with such drove, who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding one thousand dollars.

**Source:** Laws 1879, § 7, p. 69; R.S.1913, § 102; C.S.1922, § 110; C.S. 1929, § 54-307; R.S.1943, § 54-308.

**54-309 Cattle or sheep; hides; removal by other than owner; prohibited; exception.**

It shall be unlawful for any person other than the owner or his agent or employee, to skin or remove from the carcass the skin, hide or pelt of any neat cattle or sheep found dead, except when such stock is killed by railroad trains, when the employees of such railroads may remove the hides from stock so killed.

**Source:** Laws 1879, § 8, p. 70; R.S.1913, § 103; C.S.1922, § 111; C.S. 1929, § 54-308; R.S.1943, § 54-309.

**54-310 Herd laws; violations; rewards; authorized.**

The county boards of the several counties may offer and pay rewards for the detection of those violating sections 54-301 to 54-309.

**Source:** Laws 1879, § 9, p. 70; R.S.1913, § 104; C.S.1922, § 112; C.S. 1929, § 54-309; R.S.1943, § 54-310.

**54-311 Wells and pitfalls; prohibited acts.**

It shall be unlawful for the owner or holder of any real estate in the State of Nebraska to leave uncovered any well or other pitfall into which any person or animal may fall or receive injury. Every pitfall shall be filled, adequately covered, or enclosed so as not to constitute a safety hazard. Every well not in use shall be decommissioned or properly placed in inactive status in accordance with the Water Well Standards and Contractors' Practice Act so as not to constitute a safety hazard.

**Source:** Laws 1897, c. 6, § 1, p. 46; R.S.1913, § 105; C.S.1922, § 113; C.S.1929, § 54-310; R.S.1943, § 54-311; Laws 2003, LB 245, § 9; Laws 2007, LB463, § 1173.

**Cross References****Abandoned water wells:**

Duty of licensed water well contractor to plug, see section 46-1234.

Duty of owner to decommission and notify Department of Natural Resources, see section 46-602.

Penalty for failure to decommission, see section 46-1240.

Standards for decommissioning, see section 46-1227.

**Water Well Standards and Contractors' Practice Act**, see section 46-1201.

**54-312 Repealed. Laws 2003, LB 245, § 19.****54-313 Repealed. Laws 2003, LB 245, § 19.****54-314 Repealed. Laws 2003, LB 245, § 19.****54-315 Wells and pitfalls; violation; penalty.**

Any person who violates section 54-311 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1897, c. 6, § 4, p. 47; R.S.1913, § 108; C.S.1922, § 116; C.S.1929, § 54-313; R.S.1943, § 54-315; Laws 2003, LB 245, § 10.

**ARTICLE 4****ESTRAYS AND TRESPASSING ANIMALS****Section**

- 54-401. Estrays, trespassing animals; damages; liability.
- 54-402. Trespassing animals; damages; lien.
- 54-403. Trespassing animals; distraint; notice.
- 54-404. Trespassing animals; distraint; damages; owner's failure to pay; sale.
- 54-405. Distraint; arbitrators; number; powers.
- 54-406. Distraint; arbitration award; enforcement; appeal.
- 54-407. Estrays; owner unknown; procedure.
- 54-408. Repealed. Laws 1996, LB 1174, § 9.
- 54-409. Repealed. Laws 1965, c. 333, § 2.
- 54-410. Repealed. Laws 1965, c. 333, § 2.
- 54-411. Repealed. Laws 1965, c. 333, § 2.
- 54-412. Repealed. Laws 1965, c. 333, § 2.
- 54-413. Repealed. Laws 1965, c. 333, § 2.

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- 54-414. Repealed. Laws 1965, c. 333, § 2.  
 54-415. Estrays; report; sale; procedure; disposition of proceeds; violations; penalty.  
 54-416. Feral swine; applicability of sections; destruction; when.  
 54-417. Repealed. Laws 1965, c. 333, § 2.  
 54-418. Repealed. Laws 1965, c. 333, § 2.  
 54-419. Repealed. Laws 1965, c. 333, § 2.  
 54-420. Repealed. Laws 1965, c. 333, § 2.  
 54-421. Repealed. Laws 1965, c. 333, § 2.  
 54-422. Repealed. Laws 1965, c. 333, § 2.  
 54-423. Repealed. Laws 1965, c. 333, § 2.  
 54-424. Repealed. Laws 1965, c. 333, § 2.  
 54-425. Repealed. Laws 1965, c. 333, § 2.

**54-401 Estrays, trespassing animals; damages; liability.**

The owners of cattle, horses, mules, swine, sheep, and goats in this state are liable for all damages done by such stock upon the lands of another in this state as provided by section 54-402 if the damages to the lands are not the result of negligent or willful damage to the division fence by the person claiming damages to the land.

**Source:** Laws 1871, § 1, p. 120; R.S.1913, § 109; C.S.1922, § 117; C.S. 1929, § 54-401; R.S.1943, § 54-401; Laws 1983, LB 149, § 1; Laws 1996, LB 1174, § 5; Laws 2008, LB925, § 1.

1. Persons liable
2. Lien
3. Remedies
4. Miscellaneous

**1. Persons liable**

Joint owners of herd are liable jointly. *Wilson v. White*, 77 Neb. 351, 109 N.W. 367 (1906).

Mortgagee, without possession, is not owner within meaning of statute. *Goff v. Byers Bros. & Co.*, 70 Neb. 1, 96 N.W. 1037 (1903).

The term owners is construed to include depasturer. *Laflin v. Svoboda*, 37 Neb. 368, 55 N.W. 1049 (1893).

**2. Lien**

Owner of land damaged by trespassing stock has lien thereon for damages done and for care and feed while impounded. *Angus Cattle Co. v. McLeod*, 98 Neb. 108, 152 N.W. 322 (1915).

**3. Remedies**

Negligence of plaintiff in maintenance of division fence immaterial in action for damages by livestock upon cultivated lands. *Fiene v. Robertson*, 184 Neb. 668, 171 N.W.2d 179 (1969).

Action for damages by stock ranging at large upon uncultivated land will not lie, but driving of animals thereon is actionable wrong. *Meyers v. Menter*, 63 Neb. 427, 88 N.W. 662 (1902).

Remedy herein is not exclusive, and common-law liability is not abrogated. *Lorance v. Hillyer*, 57 Neb. 266, 77 N.W. 755 (1898).

Injunction will lie to restrain threatened trespass of stock. *State Bank of Nebraska of Seward v. Rohren*, 55 Neb. 223, 75 N.W. 543 (1898).

Where owner drives his stock upon unenclosed and uncultivated lands of another he is liable for trespass. *Delaney v. Errickson*, 11 Neb. 533, 10 N.W. 451 (1881).

**4. Miscellaneous**

The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. *Foland v. Malander*, 222 Neb. 1, 381 N.W.2d 914 (1986).

A fenced pasture planted to wheat grass and not surrounded by a plowed strip constitutes "cultivated lands" for purposes of this statute. *Fuchser v. Jacobson*, 205 Neb. 786, 290 N.W.2d 449 (1980).

Section is not applicable to uncultivated, unenclosed wild prairie lands of state. *Delaney v. Errickson*, 10 Neb. 492, 6 N.W. 600 (1880).

**54-402 Trespassing animals; damages; lien.**

All damages to property so committed by such stock running at large shall be paid by the owners of such stock; and the person, whose property is so damaged thereby, may have a lien upon such trespassing animals for the full amount of damages and costs, and may enforce the collection of the same by the proper civil action.

**Source:** Laws 1871, § 2, p. 120; R.S.1913, § 110; C.S.1922, § 118; C.S. 1929, § 54-402; R.S.1943, § 54-402.

The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. *Foland v. Malander*, 222 Neb. 1, 381 N.W.2d 914 (1986).

Burden of restraining domestic animals is upon owner and ordinarily no excuse for failure to restrain them is recognized. *Fiene v. Robertson*, 184 Neb. 668, 171 N.W.2d 179 (1969).

Lien includes value of feed and care, together with damages to land. *Angus Cattle Co. v. McLeod*, 98 Neb. 108, 152 N.W. 322 (1915).

Remedy afforded not exclusive. Object of statute was to give one injured right to possession of trespassing animals, lien thereon, and right to hold animals until damages were adjusted. *Lorance v. Hillyer*, 57 Neb. 266, 77 N.W. 755 (1898).

Lien attaches to stock trespassing on cultivated lands within cities of metropolitan class. *Lingonner v. Ambler*, 44 Neb. 316, 62 N.W. 486 (1895).

Damages may be recovered by owner of unenclosed land, but he has no lien on stock. *Brown v. Sylvester*, 37 Neb. 870, 56 N.W. 709 (1893).

Waiving of lien by surrender of possession of cattle does not prevent person injured from maintaining action for damages. *Laffin v. Svoboda*, 37 Neb. 368, 55 N.W. 1049 (1893).

Remedy for trespass provided herein is cumulative and not exclusive. *Keith & Barton v. Tilford*, 12 Neb. 271, 11 N.W. 315 (1882).

**54-403 Trespassing animals; distraint; notice.**

When any such stock is found upon the lands of another, it is lawful for the owner or person in possession of such lands to impound such stock. If the owner of the stock can be found, and is known to the distrainer, it is the duty of the distrainer to notify the owner by leaving a written notice at his or her usual place of residence with some member of the family over the age of fourteen or, in the absence of such person, by posting on the door of such residence a copy of the notice of the distraint of the stock, describing it, and stating the amount of damages claimed and the name of the arbitrator. The notice shall also require the owner within forty-eight hours after receiving such notice to take the stock away, after making full payment of all damages and costs to the satisfaction of the distrainer of trespassing animals. The notice may be in the following form:

You are hereby notified that on this ..... day of ..... 20..., your stock, of which I now have in my possession ..... (here describe the animal or animals) did trespass upon my land, and damage it to the amount of ..... . You are required to pay the above charges within forty-eight hours from the delivery of this notice or the stock will be sold as provided by law. I have appointed ..... to act as arbitrator should you not feel satisfied with the amount of damages claimed in the within notice.

No claim for damages shall be maintained by the distrainer without the notice contemplated in this section having been given when the owner is known by the distrainer of such stock.

**Source:** Laws 1871, § 3, p. 120; R.S.1913, § 111; C.S.1922, § 119; C.S. 1929, § 54-403; R.S.1943, § 54-403; Laws 1996, LB 1174, § 6; Laws 2004, LB 813, § 25.

- 1. Constitutionality
- 2. Notice
- 3. Award
- 4. Miscellaneous

**1. Constitutionality**

The herd law provides a reasonable method of procedure in the nature of an action in rem against trespassing stock and is constitutional. *Randall v. Gross*, 67 Neb. 255, 93 N.W. 223 (1903).

**2. Notice**

Mortgagee is not bound unless notified. *Goff v. Byers Bros. & Co.*, 70 Neb. 1, 96 N.W. 1037 (1903).

Lienholder must comply with statute, and reasonableness of notice is a question of fact. *Sloan v. Bain*, 47 Neb. 914, 66 N.W. 1013 (1896).

Owner has forty-eight hours after receipt of notice in which to pay damages and take stock away, and no greater damages than

amount specified in notice can be claimed. *Allen v. Van Ostrand*, 19 Neb. 578, 27 N.W. 642 (1886).

Notice and substantial compliance with statute necessary for right to enforce lien. *Bucher v. Wagoner*, 13 Neb. 424, 14 N.W. 160 (1882).

Notice must be given within reasonable time as determined by circumstances. *Haggard v. Wallen*, 6 Neb. 271 (1877).

Notice and demand must conform to statute. *McAllister v. Wrede*, 5 Neb. Unof. 82, 97 N.W. 318 (1903).

**3. Award**

Arbitrators' award is not a bar to action for negligence. *Richardson v. Halstead*, 44 Neb. 606, 62 N.W. 1077 (1895).



**4. Miscellaneous**

Act is superior to city ordinances. *Lingonner v. Ambler*, 44 Neb. 316, 62 N.W. 486 (1895).

Taker-up must comply substantially with requirements of statute or he will acquire no lien. *Hanscom v. Burmood*, 35 Neb. 504, 53 N.W. 371 (1892).

If person taking up stock does not comply with statute by refusing to select arbitrator, he acquires no lien and loses right

to possession. *Deirks v. Wielage*, 18 Neb. 176, 24 N.W. 728 (1885).

Owner may replevin upon tender of damages. *Shroaf v. Allen*, 12 Neb. 109, 10 N.W. 551 (1881).

Owner must tender full amount. *McAllister v. Wrede*, 5 Neb. Unof. 82, 97 N.W. 318 (1903).

**54-404 Trespassing animals; distraint; damages; owner's failure to pay; sale.**

If the owner of such stock shall refuse, within forty-eight hours after having been notified in writing, to pay the damages claimed or appoint an arbitrator to represent his interests, the animal or animals shall be sold upon execution as required by law, when the amount of damages and costs have been filed with the county court of the county within which the damages have been sustained.

**Source:** Laws 1871, § 4, p. 121; R.S.1913, § 112; C.S.1922, § 120; C.S. 1929, § 54-404; R.S.1943, § 54-404; Laws 1972, LB 1032, § 259.

**Cross References**

**Uniform Arbitration Act**, applicability, see section 25-2602.01.

Essentials of jurisdiction of justice of peace are stated. *Randall v. Gross*, 67 Neb. 255, 93 N.W. 223 (1903).

Issuance and service of summons are not necessary to give justice jurisdiction to issue execution, nor does void judgment

destroy jurisdiction. *Holmes v. Irwin*, 17 Neb. 99, 22 N.W. 124 (1885), 22 N.W. 347 (1885).

Object of law is to afford speedy and inexpensive mode of ascertaining damages. *Haggard v. Wallen*, 6 Neb. 271 (1877).

**54-405 Distraint; arbitrators; number; powers.**

In case the parties interested cannot agree as to the amount of damages and costs sustained, each party may choose a man, and, in case the two men chosen cannot agree, they shall choose a third man, and, after being duly sworn for the purpose herein named, the three shall proceed to assess the damages, possessing for that purpose the general power of arbitrators.

**Source:** Laws 1871, § 5, p. 121; R.S.1913, § 113; C.S.1922, § 121; C.S. 1929, § 54-405; R.S.1943, § 54-405.

**Cross References**

**Uniform Arbitration Act**, applicability, see section 25-2602.01.

Provisions of this section are not compulsory upon either party. *Randall v. Gross*, 67 Neb. 255, 93 N.W. 223 (1903).

Arbitrators' award is not a bar to action for negligence of distraintor. *Richardson v. Halstead*, 44 Neb. 606, 62 N.W. 1077 (1895).

Purpose of law is that taker-up of stock shall have a lien for only such damages as could be ascertained by arbitrators to be immediately appointed. *Deirks v. Wielage*, 18 Neb. 176, 24 N.W. 728 (1885).

**54-406 Distraint; arbitration award; enforcement; appeal.**

The arbitrators shall make an award in writing, which, if not paid within five days after the award has been made, may be filed with the county court and shall operate as a judgment, which judgment shall be a lien upon the stock so distrained, and execution may issue upon such stock for the collection of such damages and costs as in other cases; *Provided*, either party may have an appeal from the judgment as in other cases in county court. The arbitrators shall be allowed two dollars each for their services.

**Source:** Laws 1871, § 6, p. 121; R.S.1913, § 114; C.S.1922, § 122; C.S. 1929, § 54-406; R.S.1943, § 54-406; Laws 1972, LB 1032, § 260.

**Cross References**

**Uniform Arbitration Act**, applicability, see section 25-2602.01.

Owner of stock, after tendering the proper amount of damages sustained, may replevin the stock. *Randall v. Gross*, 67 Neb. 255, 93 N.W. 223 (1903).

Authority of arbitrators is merely to appraise damages and costs sustained by landowner. *Richardson v. Halstead*, 44 Neb. 606, 62 N.W. 1077 (1895).

Judgment on award may be appealed from. Sections of civil code relating to arbitration are not applicable. *Holub v. Mitchell*, 42 Neb. 389, 60 N.W. 596 (1894).

**54-407 Estrays; owner unknown; procedure.**

In case the owner of such stock is not known or found in the county, the distrainer of the stock so trespassing upon lands shall proceed as provided by law regulating estrays and the stock shall be held liable for all damages and costs.

**Source:** Laws 1871, § 7, p. 121; R.S.1913, § 115; C.S.1922, § 123; C.S. 1929, § 54-407; R.S.1943, § 54-407; Laws 1996, LB 1174, § 7.

**54-408 Repealed. Laws 1996, LB 1174, § 9.**

**54-409 Repealed. Laws 1965, c. 333, § 2.**

**54-410 Repealed. Laws 1965, c. 333, § 2.**

**54-411 Repealed. Laws 1965, c. 333, § 2.**

**54-412 Repealed. Laws 1965, c. 333, § 2.**

**54-413 Repealed. Laws 1965, c. 333, § 2.**

**54-414 Repealed. Laws 1965, c. 333, § 2.**

**54-415 Estrays; report; sale; procedure; disposition of proceeds; violations; penalty.**

Any person taking up an estray within the brand inspection area or brand inspection service area shall report the same within seven days thereafter to the Nebraska Brand Committee. Any person taking up an estray in any other area of the state shall report the same to the county sheriff of the county where the estray was taken. If the animal is determined to be an estray by a representative of the Nebraska Brand Committee or the county sheriff, as the case may be, such animal shall, as promptly as may be practicable, be sold through the most convenient livestock auction market. The proceeds of such sale, after deducting the selling expenses, shall be paid over to the Nebraska Brand Committee to be placed in the estray fund identified in section 54-1,118, if such estray was taken up within the brand inspection area or brand inspection service area, and otherwise to the treasurer of the county in which such estray was taken up. During the time such proceeds are impounded, any person taking up such estray may file claim with the Nebraska Brand Committee or the county treasurer, as the case may be, for the expense of feeding and keeping such estray while in his or her possession. When such claim is filed it shall be the duty of the Nebraska Brand Committee or the county board, as the case may be, to decide on the validity of the claim so filed and allow the claim for such amount as may be deemed equitable. When the estray is taken up within the brand inspection area or brand inspection service area, such proceeds shall be impounded for one year, unless ownership is determined sooner by the Nebraska Brand Committee, and if ownership is not determined within such one-year period, the proceeds shall be paid into the permanent school fund, less the actual expenses incurred in the investigation and processing of the estray fund.

Any amount deducted as actual expenses incurred shall be deposited in the Nebraska Brand Inspection and Theft Prevention Fund. When the stray is taken up outside the brand inspection area or brand inspection service area and ownership cannot be determined by the county board, the county board shall then order payment of the balance of the sale proceeds less expenses, to the permanent school fund. If the brand committee or the county board determines ownership of an stray sold in accordance with this section by means of evidence of ownership other than the owner's recorded Nebraska brand, an amount not to exceed the actual investigative costs or expenses may be deducted from the proceeds of the sale. Any person who violates this section is guilty of a Class II misdemeanor. The definitions found in sections 54-171.01 to 54-190 apply to this section.

**Source:** R.S.1866, p. 154; R.S.1913, § 123; C.S.1922, § 131; C.S.1929, § 54-415; R.S.1943, § 54-415; Laws 1965, c. 333, § 1, p. 953; Laws 1967, c. 344, § 1, p. 920; Laws 1977, LB 39, § 19; Laws 1979, LB 564, § 19; Laws 1980, LB 797, § 23; Laws 1983, LB 536, § 5; Laws 1999, LB 778, § 61; Laws 2014, LB768, § 10; Laws 2021, LB572, § 33.  
Effective date August 28, 2021.

**54-416 Feral swine; applicability of sections; destruction; when.**

The duties and liabilities imposed by sections 54-401 to 54-415 do not apply in the case of stray or trespass of feral swine as defined in section 37-524.01. Feral swine may be destroyed as provided in section 37-524.01.

**Source:** Laws 2005, LB 20, § 2.

**54-417 Repealed. Laws 1965, c. 333, § 2.**

**54-418 Repealed. Laws 1965, c. 333, § 2.**

**54-419 Repealed. Laws 1965, c. 333, § 2.**

**54-420 Repealed. Laws 1965, c. 333, § 2.**

**54-421 Repealed. Laws 1965, c. 333, § 2.**

**54-422 Repealed. Laws 1965, c. 333, § 2.**

**54-423 Repealed. Laws 1965, c. 333, § 2.**

**54-424 Repealed. Laws 1965, c. 333, § 2.**

**54-425 Repealed. Laws 1965, c. 333, § 2.**

**ARTICLE 5**

**FOOD SUPPLY ANIMAL VETERINARY INCENTIVE PROGRAM ACT**

Section

54-501. Act, how cited.

54-502. Terms, defined.

54-503. Program; participation; incentives.

54-504. Applicant; eligibility; preference.

54-505. Distribution of program funds.

54-506. Release from program; when; recovery of payments.

## Section

54-507. Food Supply Animal Veterinary Incentive Fund; created; use; investment.

54-508. Rules and regulations.

**54-501 Act, how cited.**

Sections 54-501 to 54-508 shall be known and may be cited as the Food Supply Animal Veterinary Incentive Program Act.

**Source:** Laws 2008, LB1172, § 1.

**54-502 Terms, defined.**

For purposes of the Food Supply Animal Veterinary Incentive Program Act:

- (1) Department means the Department of Agriculture;
- (2) Food supply animal includes cattle, hogs, sheep, goats, and poultry;
- (3) Food supply animal veterinarian means a veterinarian who is engaged in general or food supply animal practice as his or her primary focus of practice and who has a substantial portion of his or her practice devoted to food supply animal veterinary medicine;
- (4) Program means the Food Supply Animal Veterinary Incentive Program; and
- (5) Rural mixed animal veterinary practice means practice as a food supply animal veterinarian in a rural area and a substantial portion of the practice involves food supply animal veterinary practice.

**Source:** Laws 2008, LB1172, § 2.

**54-503 Program; participation; incentives.**

Each year the department shall select from a pool of applicants up to four veterinarians to participate in the program. The selected veterinarians are eligible to receive up to eighty thousand dollars under the program as an incentive to locate in rural Nebraska and practice food supply animal veterinary medicine.

**Source:** Laws 2008, LB1172, § 3.

**54-504 Applicant; eligibility; preference.**

- (1) To be eligible for funds under the program, an applicant shall:
  - (a) Be a graduate of an approved veterinary medical school;
  - (b) Be licensed to practice veterinary medicine in this state;
  - (c) Enter into a contract with the department to provide full-time veterinary medicine services as a food supply animal veterinarian in a food supply animal veterinary practice or in a rural mixed animal veterinary practice for four years in one or more communities approved by the department; and
  - (d) Be accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services to provide services relating to food supply animals by the end of the first year of service.

(2) The department shall give preference for approving communities for purposes of subdivision (1)(c) of this section to communities located in areas designated by the department as shortage areas for food supply animal veterinary medical services. In designating such areas, the department may initially

utilize shortage areas as designated by the American Veterinary Medical Association on July 18, 2008, and may revise designations as necessary and appropriate to achieve the purposes of the program.

**Source:** Laws 2008, LB1172, § 4.

**54-505 Distribution of program funds.**

(1) To the extent that funds are available, program funds shall be distributed as follows:

(a) After completing the first year of service under the contract, the veterinarian is eligible to receive up to fifteen thousand dollars;

(b) After completing the second year of service under the contract, the veterinarian is eligible to receive up to fifteen thousand dollars;

(c) After completing the third year of service under the contract, the veterinarian is eligible to receive up to twenty-five thousand dollars; and

(d) After completing the fourth year of service under the contract, the veterinarian is eligible to receive up to twenty-five thousand dollars.

(2) If the veterinarian does not complete an entire year of service or if sufficient funds are not available to provide the full dollar amount of incentive in a year, the amount distributed under this section for that year shall be prorated.

**Source:** Laws 2008, LB1172, § 5.

**54-506 Release from program; when; recovery of payments.**

(1) A veterinarian shall be released from the program contract without penalty if:

(a) The veterinarian has completed the service requirements of the contract;

(b) The veterinarian is unable to complete the service requirements of the contract because of a permanent physical disability;

(c) The veterinarian demonstrates extreme hardship or shows other good cause justifying the release; or

(d) The veterinarian dies.

(2)(a) A veterinarian shall be released from further performance of veterinary services under the program contract if he or she is unable to perform his or her contractual obligations to provide veterinary services due to the suspension or revocation of his or her federal accreditation or denial, refusal of renewal, limitation, suspension, revocation, or other disciplinary measure taken against his or her license to practice in Nebraska pursuant to section 71-1,163 until December 1, 2008, and section 38-3324 on and after December 1, 2008.

(b) If a veterinarian is released from his or her contract pursuant to subdivision (a) of this subsection, the department may recover a portion of or all of the payments made to such veterinarian under section 54-505. The department shall remit any such funds to the State Treasurer for credit to the Food Supply Animal Veterinary Incentive Fund. The department may use appropriate remedies available to enforce this subdivision.

(3) The State of Nebraska shall be released from any further obligation under the Food Supply Animal Veterinary Incentive Program Act or any contract

entered into with a veterinarian under the act if the veterinarian is released from the program pursuant to this section.

**Source:** Laws 2008, LB1172, § 6.

**54-507 Food Supply Animal Veterinary Incentive Fund; created; use; investment.**

The Food Supply Animal Veterinary Incentive Fund is created. The fund may be used to carry out the purposes of the Food Supply Animal Veterinary Incentive Program Act. The State Treasurer shall credit to the fund any money appropriated to the fund by the Legislature and any money received as gifts or grants or other private or public funds received under the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2008, LB1172, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-508 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Food Supply Animal Veterinary Incentive Program Act.

**Source:** Laws 2008, LB1172, § 8.

**ARTICLE 6  
DOGS AND CATS**

(a) DOGS

- Section
- 54-601. Dogs; personal property; owner liable for damages; exceptions.
- 54-602. Dogs owned by different persons; joint liability.
- 54-603. License tax; amount; service animal; license; additional fee; county, city, or village; collect fee; disposition.
- 54-604. Dogs; killing; when permitted.
- 54-605. Dogs; collar required.
- 54-606. Dogs; collarless; who deemed owner.
- 54-607. Dogs; running at large; penalty.
- 54-608. Dogs in counties having a population of 80,000 inhabitants or more; responsibilities of owners.
- 54-609. Repealed. Laws 2008, LB 1055, § 24.
- 54-610. Dogs in counties having a population of 80,000 inhabitants or more; poundmaster; duties; filing complaint.
- 54-611. Dogs in counties having a population of 80,000 inhabitants or more; convictions; disposition of offending dog; costs.
- 54-612. Repealed. Laws 1969, c. 445, § 13.
- 54-613. Violations; penalties.
- 54-614. County; license tax; regulate dogs running at large; appeal process.
- 54-615. County; impound dog; cost and penalties.
- 54-616. County; pounds; erection; keepers; compensation; rules and regulations.

(b) DANGEROUS DOGS

- 54-617. Dangerous dogs; terms, defined.
- 54-618. Dangerous dogs; actions required; costs; limitations on transport; permanent relocation; procedure.
- 54-619. Dangerous dogs; confinement required; warning signs.

- Section
- 54-620. Dangerous dogs; confiscation; when; costs.
- 54-621. Dangerous dogs; disposal by court order.
- 54-622. Dangerous dogs; violation; penalty.
- 54-622.01. Dangerous dogs; serious bodily injury; penalty; defense.
- 54-623. Dangerous dogs; violation; conviction; effect.
- 54-623.01. County; designate animal control authority.
- 54-624. Dangerous dogs; local laws or ordinances.
- (c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT
- 54-625. Act, how cited.
- 54-626. Terms, defined.
- 54-627. License requirements; fees; premises available for inspection.
- 54-627.01. Licensees; maintain written veterinary care plan or written emergency veterinary care plan.
- 54-628. Inspection program; department; powers; reinspection fee; prohibited acts; penalty.
- 54-628.01. Director; stop-movement order; issuance; contents; hearing; department; powers; costs; reinspection; hearing.
- 54-628.02. Violation of act, rule or regulation, or order of director; proceedings authorized.
- 54-629. Rules and regulations.
- 54-630. Application; denial; grounds; appeal.
- 54-631. Licensee; duties; disciplinary actions.
- 54-632. Notice or order; service requirements; hearing; appeal.
- 54-633. Enforcement powers; administrative fine.
- 54-633.01. Special investigator; powers; referral to another law enforcement officer.
- 54-634. Violation; penalty.
- 54-634.01. Prohibited acts.
- 54-635. Commercial Dog and Cat Operator Inspection Program Cash Fund; created; use; investment.
- 54-636. Department; enforcement powers.
- 54-637. Information on spaying and neutering; requirements.
- 54-638. Provision for spaying or neutering; when.
- 54-639. Adopter or purchaser; agreement; requirements.
- 54-640. Commercial dog or cat breeder; duties.
- 54-641. Licensees; primary enclosures; requirements.
- 54-641.01. Commercial dog breeder; dogs; opportunity for exercise.
- 54-641.02. Commercial dog breeder; veterinary care; review of health records; duties of breeder.
- 54-641.03. Breeding dog; microchip; identification.
- 54-642. Department; submit report of costs and revenue.
- 54-643. Administrative fines; disposition; lien; collection.
- (d) DOG AND CAT PURCHASE PROTECTION ACT
- 54-644. Act, how cited.
- 54-645. Terms, defined.
- 54-646. Seller; written disclosure statement; contents; receipt; notice of purchaser's rights and responsibilities; health certificate; retention of records.
- 54-647. Recourse to remedies; purchaser; duties; notice to seller; remedies.
- 54-648. Denial of refund, reimbursement of fees, or replacement; conditions.
- 54-649. Purchaser; file action; seller's rights; limit of recovery.
- 54-650. Other rights and remedies not limited; act; how construed.

## (a) DOGS

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

(1) Dogs are hereby declared to be personal property for all intents and purposes, and, except as provided in subsection (2) of this section, the owner or owners of any dog or dogs shall be liable for any and all damages that may accrue (a) to any person, other than a trespasser, by reason of having been

bitten by any such dog or dogs and (b) to any person, firm, or corporation by reason of such dog or dogs killing, wounding, injuring, worrying, or chasing any person or persons or any sheep or other domestic animals belonging to such person, firm, or corporation. Such damage may be recovered in any court having jurisdiction of the amount claimed.

(2)(a) A governmental agency or its employees using a dog in military or police work shall not be liable under subsection (1) of this section to a party to, participant in, or person reasonably suspected to be a party to or participant in the act that prompted the use of the dog in the military or police work if the officers of the governmental agency were complying with a written policy on the necessary and appropriate use of a dog for military or police work adopted by the governmental agency and if the damage occurred while the dog was responding to a harassing or provoking act or the damage was the result of a reasonable use of force while the dog or dogs were assisting an employee of the agency in any of the following:

- (i) The apprehension or holding of a suspect if the employee has a reasonable suspicion of the suspect's involvement in criminal activity;
- (ii) The investigation of a crime or possible crime;
- (iii) The execution of a warrant; or
- (iv) The defense of a peace officer or another person other than the suspect.

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

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

**1. Liability of owner**  
**2. Elements**  
**3. Miscellaneous**

**1. Liability of owner**

In addition to an owner's liability under this section and common-law liability for known vicious propensities, the keeper of a dog can be liable to injured third parties on a negligence theory. *Van Kleek v. Farmers Ins. Exch.*, 289 Neb. 730, 857 N.W.2d 297 (2014).

While this section exempts a dog owner from strict liability for injuries to a trespasser caused by the owner's dog, it does not cut off the common-law tort remedy available to a trespasser for a dog bite. *Guzman v. Barth*, 250 Neb. 763, 552 N.W.2d 299 (1996).

The strict liability of an owner of a dog for all damages that may accrue to any person, other than a trespasser, by reason of having been bitten by such dog, does not extend to the owners of leased property upon which the dog is harbored. *McCullough v. Bozarth*, 232 Neb. 714, 442 N.W.2d 201 (1989).

Dog owners are statutorily liable for any and all damages inflicted by their dog to any person, other than a trespasser, without proof of scienter or knowledge of the dangerous propensities of the dogs for biting and by reason of such dog or dogs killing, wounding, worrying, or chasing domestic animals. *Paulsen v. Courtney*, 202 Neb. 791, 277 N.W.2d 233 (1979).

In an action based upon statutory liability for injury by a dog, the injured person will be barred from recovering if he intentionally provoked the dog, and thereby caused it to attack him. *Paulsen v. Courtney*, 202 Neb. 791, 277 N.W.2d 233 (1979).

Evidence was insufficient to show that injury to sheep was caused by defendant's dogs. *Norman v. Sprague*, 167 Neb. 528, 93 N.W.2d 637 (1958).

Owner of dogs not liable when evidence fails to show injuries to horses directly attributable to dogs. *Cook v. Pickrel*, 20 Neb. 433, 30 N.W. 421 (1886).

This civil dog bite statute creates a cause of action based upon strict liability on the part of the dog owner. *State v. Ruisi*, 9 Neb. App. 435, 616 N.W.2d 19 (2000).

**2. Elements**

Given that other words in subdivision (1)(b) of this section—"worrying" and "chasing" "any person or persons or any sheep or other domestic animals belonging to such person, firm, or corporation"—entail action directed toward the injured person or toward the injured animal owned by the damaged plaintiff, the word "injuring" must also be limited to bodily hurt caused by acts directed toward the person or animal hurt. *Smith v. Meyring Cattle Co.*, 302 Neb. 116, 921 N.W.2d 820 (2019).

Playful and mischievous acts of dogs directed toward the person sustaining bodily hurt were not encompassed by this section. *Smith v. Meyring Cattle Co.*, 302 Neb. 116, 921 N.W.2d 820 (2019).

The element that the dog be vicious or have dangerous propensities is implicitly part of this section by virtue of the terms



“wound,” “worry,” and “chase.” *Smith v. Meyring Cattle Co.*, 302 Neb. 116, 921 N.W.2d 820 (2019).

The various dictionary definitions of “chase,” as applied to this section imposing liability on dog owners for damages caused by their dogs chasing any person, i.e., “to follow quickly or persistently in order to catch or harm,” “to make run away; drive,” or “to go in pursuit” are disjunctive. *Grammer v. Lucking*, 292 Neb. 475, 873 N.W.2d 387 (2016).

1992 Neb. Laws, L.B. 1011, was prompted by a court decision in which an injured person had been unable to recover for a broken hip that had allegedly been caused by a dog, because it was not a “wound” within the meaning of this section. *Underhill v. Hobelman*, 279 Neb. 30, 776 N.W.2d 786 (2009).

When the words killing, wounding, worrying, or chasing as used in this section are read together, they exclude playful and mischievous acts of dogs. *Holden v. Schwer*, 242 Neb. 389, 495 N.W.2d 269 (1993).

Question whether seven-year-old child was a trespasser under statute was question for jury, which should have been instructed

on definition of trespasser, including element of intent. *Kenney v. Barna*, 215 Neb. 863, 341 N.W.2d 901 (1983).

This section removes the common law restriction of proving scienter or knowledge of the dangerous propensities of dogs, but only as it applies to the actions of dogs specified in the statute. *Paulsen v. Courtney*, 202 Neb. 791, 277 N.W.2d 233 (1979).

The merely playful acts of dogs do not give rise to a cause of action or damages hereunder. *Donner v. Plymate*, 193 Neb. 647, 228 N.W.2d 612 (1975).

### 3. Miscellaneous

The purpose of 1992 Neb. Laws, L.B. 1011, was to expand the scope of this section to include “internal damages even if there are no external damages caused by the owner’s dog.” *Underhill v. Hobelman*, 279 Neb. 30, 776 N.W.2d 786 (2009).

Purpose of statute is to protect domestic animals, ordinarily the prey of dogs. No right exists to kill dog for past conduct. *Brown v. Graham*, 80 Neb. 281, 114 N.W. 153 (1907).

Owner can recover value of dog killed, if not running at large. *Nehr v. State*, 35 Neb. 638, 53 N.W. 589 (1892).

### 54-602 Dogs owned by different persons; joint liability.

If two or more dogs owned by different persons shall kill, wound, chase or worry any sheep or other domestic animal, such persons shall be jointly and severally liable for all damage done by such dogs.

**Source:** Laws 1877, § 2, p. 156; R.S.1913, § 173; C.S.1922, § 170; C.S. 1929, § 54-602; R.S.1943, § 54-602.

### 54-603 License tax; amount; service animal; license; additional fee; county, city, or village; collect fee; disposition.

(1) Any county, city, or village shall have authority by ordinance or resolution to impose a license tax, in an amount which shall be determined by the appropriate governing body, on the owner or harbinger of any dog or dogs, to be paid under such regulations as shall be provided by such ordinance or resolutions.

(2) Every service animal shall be licensed as required by local ordinances or resolutions, but no license tax shall be charged. Upon the retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of a license tax as prescribed by local ordinances or resolutions.

(3) Any county, city, or village that imposes a license tax on the owner or harbinger of any cat or cats or any dog or dogs under this section shall, in addition to the license tax imposed by the licensing jurisdiction, collect from the licensee a fee of one dollar and twenty-five cents. The person designated by the licensing jurisdiction to collect and administer the license tax shall act as agent for the State of Nebraska in the collection of the fee. From each fee of one dollar and twenty-five cents collected, such person shall retain three cents and remit the balance to the Department of Agriculture. The department shall then remit such balance to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund. If the person collecting the fee is the licensing jurisdiction, the three cents shall be credited to the licensing jurisdiction’s general fund. If the person collecting the fee is a private contractor, the three cents shall be credited to an account of the private contractor. The remittance to the Department of Agriculture shall be made at least annually at the conclusion of the licensing jurisdiction’s fiscal year, except that any licensing jurisdiction or private contractor that collects fifty dollars or

less of such fees during the fiscal year may remit the fees when the cumulative amount of fees collected reaches fifty dollars.

**Source:** Laws 1877, § 3, p. 156; R.S.1913, § 174; C.S.1922, § 171; C.S. 1929, § 54-603; R.S.1943, § 54-603; Laws 1976, LB 515, § 2; Laws 1997, LB 814, § 7; Laws 2008, LB806, § 13; Laws 2010, LB910, § 3; Laws 2015, LB360, § 12; Laws 2021, LB509, § 4. Effective date August 28, 2021.

**Cross References**

For other provisions authorizing municipalities to impose license tax on dogs, see sections 14-102, 15-220, 16-206, and 17-526.

In action against county for loss of sheep killed by dogs, based on statute giving new remedy and prescribing prerequisite conditions, plaintiff must allege that conditions have been per- formed. *McCullough v. Colfax County*, 4 Neb. Unof. 543, 95 N.W. 29 (1903).

**54-604 Dogs; killing; when permitted.**

Any person shall have the right to kill any dog found doing any damage as mentioned in sections 54-601 and 54-602 to any sheep or domestic animal, or if he shall have just and reasonable ground to believe that such dog has been killing, wounding, chasing or worrying such sheep or animal; and no action shall be maintained for such killing.

**Source:** Laws 1877, § 4, p. 156; R.S.1913, § 175; C.S.1922, § 172; C.S. 1929, § 54-604; R.S.1943, § 54-604.

**54-605 Dogs; collar required.**

It shall be the duty of every owner or owners of any dog or dogs to securely place upon the neck of such dog or dogs a good and sufficient collar with a metallic plate thereon. The plate shall be plainly inscribed with the name of such owner.

**Source:** Laws 1877, § 5, p. 157; R.S.1913, § 176; C.S.1922, § 173; C.S. 1929, § 54-605; R.S.1943, § 54-605; Laws 1990, LB 50, § 12.

Dog under control of owner is not running at large. *Brown v. Graham*, 80 Neb. 281, 114 N.W. 153 (1907). Dog is running at large when he leaves the owner's premises or goes upon the public road, and no one having control of him is near. *Nehr v. State*, 35 Neb. 638, 53 N.W. 589 (1892).

**54-606 Dogs; collarless; who deemed owner.**

Every person who shall harbor about his or her premises a collarless dog for the space of ten days shall be taken and held as the owner, and shall be liable for all damages which such dog shall commit.

**Source:** Laws 1877, § 6, p. 157; R.S.1913, § 177; C.S.1922, § 174; C.S. 1929, § 54-606; R.S.1943, § 54-606.

Dog that assails people along a public road is a nuisance and may be killed by person assailed. *Nehr v. State*, 35 Neb. 638, 53 N.W. 589 (1892).

**54-607 Dogs; running at large; penalty.**

The owner of any dog running at large for ten days without a collar as required in section 54-605 shall be fined an amount not to exceed twenty-five dollars.

**Source:** Laws 1877, § 7, p. 157; R.S.1913, § 178; C.S.1922, § 175; C.S. 1929, § 54-607; R.S.1943, § 54-607; Laws 2008, LB1055, § 8.

**54-608 Dogs in counties having a population of 80,000 inhabitants or more; responsibilities of owners.**

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, it shall be unlawful for any person, firm, partnership, limited liability company, or corporation to have any dog which is owned, kept, harbored, or allowed to be habitually in or upon premises occupied by him, her, or it or under his, her, or its control to be at large.

**Source:** Laws 1961, c. 268, § 2, p. 787; Laws 1988, LB 630, § 1; Laws 2008, LB1055, § 9.

**54-609 Repealed. Laws 2008, LB 1055, § 24.**

**54-610 Dogs in counties having a population of 80,000 inhabitants or more; poundmaster; duties; filing complaint.**

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, whenever complaints are made to the poundmaster or the person or corporation performing the duties of poundmaster that a dog is at large, it shall be the duty of such poundmaster, person, or corporation to investigate such complaint. If upon such investigation it appears that the complaint is founded upon facts, it shall be the duty of such poundmaster, person, or corporation to take such dog into custody and he, she, or it may file or cause to be filed a complaint in the county court against such person, firm, partnership, limited liability company, or corporation owning, keeping, or harboring such dog charging a violation of section 54-601 or 54-608.

**Source:** Laws 1961, c. 268, § 4, p. 787; Laws 1988, LB 630, § 3; Laws 1988, LB 801, § 1; Laws 1993, LB 121, § 338; Laws 2008, LB1055, § 10.

**54-611 Dogs in counties having a population of 80,000 inhabitants or more; convictions; disposition of offending dog; costs.**

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, if upon final hearing the defendant is adjudged guilty of any violation of section 54-601 or 54-608, the court may, in addition to the penalty provided in section 54-613, order such disposition of the offending dog as may seem reasonable and proper. Disposition includes sterilization, seizure, permanent assignment of the dog to a court-approved animal shelter or animal rescue as such terms are defined in section 28-1018, or destruction of the dog in an expeditious and humane manner. Reasonable costs for such disposition are the responsibility of the defendant.

**Source:** Laws 1961, c. 268, § 5, p. 787; Laws 1988, LB 630, § 4; Laws 1988, LB 801, § 2; Laws 2008, LB1055, § 11; Laws 2010, LB910, § 4.

Because restitution is imposed as punishment and is part of the criminal sentence, a dispositional order pursuant to this section is akin to a sentencing order, and an appellate court reviews the order for an abuse of discretion. *State v. Dittoe*, 269 Neb. 317, 693 N.W.2d 261 (2005).

The provision in this section that allows the court to order disposition of an offending dog is similar to section 29-2280, which allows a court to order restitution to the victim of a crime. *State v. Dittoe*, 269 Neb. 317, 693 N.W.2d 261 (2005).

**54-612 Repealed. Laws 1969, c. 445, § 13.**

**54-613 Violations; penalties.**

Any person in violation of section 54-601 or 54-608 shall be deemed guilty of a Class IV misdemeanor.

**Source:** Laws 1961, c. 268, § 7, p. 788; Laws 1977, LB 39, § 20; Laws 1988, LB 630, § 5; Laws 1988, LB 801, § 3; Laws 2008, LB1055, § 12.

**54-614 County; license tax; regulate dogs running at large; appeal process.**

(1) A county may collect a license tax in an amount which shall be determined by the appropriate governing body from the owners and harborers of dogs and may enforce such tax by appropriate penalties. A county may impound any dog if the owner or harborer shall refuse or neglect to pay such license tax. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals.

(2) A county may regulate or prohibit the running at large of dogs, adopt regulations to guard against injuries or annoyances therefrom, and authorize the destruction, adoption, or other disposition of such dogs when running at large contrary to the provisions of this subsection or any regulations adopted in accordance with this subsection. A county adopting regulations in accordance with this subsection shall provide for an appeal process with respect to such regulations.

**Source:** Laws 1963, c. 104, § 1, p. 429; Laws 1986, LB 1063, § 1; Laws 1997, LB 814, § 8; Laws 2008, LB806, § 14; Laws 2008, LB1055, § 13.

**54-615 County; impound dog; cost and penalties.**

A county may impound any dog deemed to be running at large. The owner of such dog shall pay the reasonable cost and penalties provided for the violation of such prohibition, including the expense of impounding and keeping the dog.

**Source:** Laws 1963, c. 104, § 2, p. 429; Laws 2008, LB1055, § 14.

**54-616 County; pounds; erection; keepers; compensation; rules and regulations.**

A county may provide for the erection of any pounds needed within the county, appoint and compensate keepers thereof, and establish and enforce rules governing such pounds.

**Source:** Laws 1963, c. 104, § 3, p. 430; Laws 2008, LB1055, § 15.

## (b) DANGEROUS DOGS

**54-617 Dangerous dogs; terms, defined.**

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

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

(2) Animal control officer means any individual employed, appointed, or authorized by an animal control authority for the purpose of aiding in the enforcement of sections 54-617 to 54-624 or any other law or ordinance

relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal;

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

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

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

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

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

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

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

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

**Source:** Laws 1989, LB 208, § 1; Laws 2008, LB1055, § 16; Laws 2009, LB494, § 8.

**54-618 Dangerous dogs; actions required; costs; limitations on transport; permanent relocation; procedure.**

(1) A dangerous dog that has been declared as such shall be spayed or neutered and implanted with a microchip identification number by a licensed veterinarian within thirty days after such declaration. The cost of both procedures is the responsibility of the owner of the dangerous dog. Written proof of both procedures and the microchip identification number shall be provided to the animal control authority after the procedures are completed.

(2) No owner of a dangerous dog shall permit the dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash.

(3) Except as provided in subsection (4) of this section or for a reasonable veterinary purpose, no owner of a dangerous dog shall transport such dog or permit such dog to be transported to another county, city, or village in this state.

(4) An owner of a dangerous dog may transport such dog or permit such dog to be transported to another county, city, or village in this state for the purpose of permanent relocation of the owner if the owner has obtained written permission prior to such relocation from the animal control authority of the county, city, or village in which the owner resides and from the county, city, or village in which the owner will reside. Each animal control authority may grant such permission based upon a reasonable evaluation of both the owner and the dog, including if the owner has complied with the laws of this state and of the county, city, or village in which he or she resides with regard to dangerous dogs after the dog was declared dangerous. An animal control authority shall not grant permission under this subsection if the county, city, or village has an ordinance or resolution prohibiting the relocation of dangerous dogs. After the permanent relocation, the animal control authority of the county, city, or village in which the owner resides shall monitor the owner and such dog for a period of at least thirty days but not to exceed ninety days to ensure the owner's compliance with the laws of this state and of such county, city, or village with regard to dangerous dogs. Nothing in this subsection shall permit the rescindment of the declaration of dangerous dog.

**Source:** Laws 1989, LB 208, § 2; Laws 2008, LB1055, § 17.

**54-619 Dangerous dogs; confinement required; warning signs.**

(1) No person, firm, partnership, limited liability company, or corporation shall own, keep, or harbor or allow to be in or on any premises occupied by him, her, or it or under his, her, or its charge or control any dangerous dog without such dog being confined so as to protect the public from injury.

(2) While unattended on the owner's property, a dangerous dog shall be securely confined, in a humane manner, indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the dog from escaping. The pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground at a depth of at least one foot. The pen or structure shall also protect the dog from the elements. The pen or structure shall be at least ten feet from any property line of the owner. The owner of a dangerous dog shall post warning signs on the property where the dog is kept that are clearly visible from all areas of public access and that inform persons that a dangerous dog is on the property. Each warning sign shall be no less than ten inches by twelve inches and shall contain the words

warning and dangerous animal in high-contrast lettering at least three inches high on a black background.

**Source:** Laws 1989, LB 208, § 3; Laws 2008, LB1055, § 18.

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

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

**Source:** Laws 1989, LB 208, § 4; Laws 2008, LB1055, § 19; Laws 2009, LB494, § 9.

**54-621 Dangerous dogs; disposal by court order.**

In addition to any other penalty, a court may order the animal control authority to dispose of a dangerous dog in an expeditious and humane manner.

**Source:** Laws 1989, LB 208, § 5.

**54-622 Dangerous dogs; violation; penalty.**

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

**Source:** Laws 1989, LB 208, § 6; Laws 2009, LB494, § 10.

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

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

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

**Source:** Laws 2009, LB494, § 13.

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

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

(2) Except as provided in section 54-622.01, if a dangerous dog of an owner with a prior conviction under sections 54-617 to 54-624 attacks or bites a human being or domestic animal, the owner shall be guilty of a Class IIIA misdemeanor. In addition, the dangerous dog shall be immediately confiscated

by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

**Source:** Laws 1989, LB 208, § 7; Laws 2008, LB1055, § 20; Laws 2009, LB494, § 11.

**54-623.01 County; designate animal control authority.**

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

**Source:** Laws 2008, LB1055, § 22; Laws 2009, LB494, § 12.

**54-624 Dangerous dogs; local laws or ordinances.**

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

**Source:** Laws 1989, LB 208, § 8; Laws 2008, LB1055, § 21; Laws 2009, LB494, § 14.

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

**54-625 Act, how cited.**

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

**Source:** Laws 2000, LB 825, § 1; Laws 2003, LB 274, § 1; Laws 2006, LB 856, § 13; Laws 2007, LB12, § 1; Laws 2009, LB241, § 1; Laws 2012, LB427, § 1; Laws 2015, LB360, § 13.

**54-626 Terms, defined.**

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

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

(2) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as the primary means of housing dogs or cats;

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

(4) Boarding kennel means a facility which is primarily used to house or contain dogs or cats owned by persons other than the operator of such facility. The primary function of a boarding kennel is to temporarily harbor dogs or cats when the owner of the dogs or cats is unable to do so or to provide training, grooming, or other nonveterinary service for consideration before returning the dogs or cats to the owner. A facility which provides such training, grooming, or



other nonveterinary service is not a boarding kennel for the purposes of the act unless dogs or cats owned by persons other than the operator of such facility are housed at such facility overnight. Veterinary clinics, animal control facilities, animal rescues, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

(5) Breeding dog means any sexually intact male or female dog six months of age or older owned or harbored by a commercial dog breeder;

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

(7) Commercial cat breeder means a person engaged in the business of breeding cats:

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

(b) Who owns or harbors four or more cats, intended for breeding, in a twelve-month period beginning on April 1 of each year;

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

(d) Who knowingly sells, exchanges, or leases cats for later retail sale or brokered trading;

(8) Commercial dog breeder means a person engaged in the business of breeding dogs:

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

(b) Who owns or harbors four or more dogs, intended for breeding, in a twelve-month period beginning on April 1 of each year;

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

(d) Who knowingly sells, exchanges, or leases dogs for later retail sale or brokered trading;

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

(10) Department means the Department of Agriculture with the State Veterinarian in charge, subordinate only to the director;

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

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

(13) Foster home means any person who provides temporary housing for twenty or fewer dogs or cats that are six months of age or older in any twelve-month period and is affiliated with a person operating as an animal rescue that uses foster homes as its primary housing of dogs or cats. To be considered a foster home, a person shall not participate in the acquisition of the dogs or cats

for which temporary care is provided. Any foster home which houses more than twenty dogs or cats that are six months of age or older in any twelve-month period or who participates in the acquisition of dogs or cats shall be licensed as an animal rescue;

(14) Harbor means:

(a) Providing shelter or housing for a dog or cat regulated under the act; or  
(b) Maintaining the care, supervision, or control of a dog or cat regulated under the act;

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

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

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

(18) Normal business hours means daily between 7 a.m. and 7 p.m. unless an applicant, a licensee, or any other person the department has reasonable cause to believe is required by the act to be licensed provides in writing to the department a description of his or her own normal business hours which reasonably allows the department to make inspections;

(19) Operator means a person performing the activities of an animal control facility, an animal rescue, an animal shelter, a boarding kennel, a commercial cat breeder, a commercial dog breeder, a dealer, or a pet shop;

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

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

(22) Premises means all public or private buildings, vehicles, equipment, containers, kennels, pens, and cages used by an operator and the public or private ground upon which an operator's facility is located if such buildings, vehicles, equipment, containers, kennels, pens, cages, or ground are used by the owner or operator in the usual course of business;

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

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

(25) Significant threat to the health or safety of dogs or cats means:

(a) Not providing shelter or protection from extreme weather resulting in life-threatening conditions predisposing to hyperthermia or hypothermia in dogs or cats that are not acclimated to the temperature;

(b) Acute injuries involving potentially life-threatening medical emergencies in which the owner refuses to seek immediate veterinary care;

(c) Not providing food or water resulting in conditions of potential starvation or severe dehydration;

(d) Egregious human abuse such as trauma from beating, torturing, mutilating, burning, or scalding; or

(e) Failing to maintain sanitation resulting in egregious situations where a dog or cat cannot avoid walking, lying, or standing in feces;

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

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

**Source:** Laws 2000, LB 825, § 2; Laws 2003, LB 233, § 1; Laws 2003, LB 274, § 2; Laws 2004, LB 1002, § 1; Laws 2009, LB241, § 2; Laws 2010, LB910, § 5; Laws 2012, LB427, § 2; Laws 2015, LB360, § 14; Laws 2020, LB344, § 64.

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

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

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with a one-time license fee of one hundred twenty-five dollars. Such fee is nonreturnable. Any license issued on or before November 30, 2015, shall remain valid after expiration unless it lapses pursuant to this section, is revoked pursuant to section 54-631, or is voluntarily surrendered. Upon receipt of an application and the license fee and upon completion of a qualifying inspection, the appropriate license may be issued by the department. The department may enter the premises of any applicant for a license to determine if the applicant meets the requirements for licensure under the act. If an applicant does not at the time of inspection harbor any dogs or cats, the inspection shall be of the applicant's records and the planned housing facilities. Such license shall not be transferable to another person or location and shall lapse automatically upon a change of ownership or location.

(3)(a) In addition to the license fee required in subsection (2) of this section, an annual fee shall also be charged. Except as otherwise provided in this subsection, the annual fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats harbored by the licensee over the previous twelve-month period:

- (i) Ten or fewer dogs or cats, one hundred seventy-five dollars;
- (ii) Eleven to fifty dogs or cats, two hundred twenty-five dollars;
- (iii) Fifty-one to one hundred dogs or cats, two hundred seventy-five dollars;
- (iv) One hundred one to one hundred fifty dogs or cats, three hundred twenty-five dollars;
- (v) One hundred fifty-one to two hundred dogs or cats, three hundred seventy-five dollars;
- (vi) Two hundred one to two hundred fifty dogs or cats, four hundred twenty-five dollars;

(vii) Two hundred fifty-one to three hundred dogs or cats, four hundred seventy-five dollars;

(viii) Three hundred one to three hundred fifty dogs or cats, five hundred twenty-five dollars;

(ix) Three hundred fifty-one to four hundred dogs or cats, five hundred seventy-five dollars;

(x) Four hundred one to four hundred fifty dogs or cats, six hundred twenty-five dollars;

(xi) Four hundred fifty-one to five hundred dogs or cats, six hundred seventy-five dollars; and

(xii) More than five hundred dogs or cats, two thousand one hundred dollars.

(b) If a person operates with more than one type of license at the same location, the person shall pay only one annual fee based on the primary licensed activity occurring at that location as determined by the number of dogs or cats affected by the licensed activity.

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

(d) The annual fee for an animal rescue shall be one hundred fifty dollars.

(e) The annual fee for a commercial dog or cat breeder shall be determined according to the fee schedule set forth in subdivision (a) of this subsection based upon the total number of breeding dogs or cats owned or harbored by the commercial breeder over the previous twelve-month period.

(f) In addition to the fee as prescribed in the fee schedule set forth in subdivision (a) of this subsection, the annual fee for a commercial dog or cat breeder, pet shop, dealer, or boarding kennel shall include a fee of two dollars times the daily average number of dogs or cats owned or harbored by the licensee over the previous twelve-month period numbering more than ten dogs or cats subject to subdivision (g) of this subsection.

(g) The fees charged under subdivision (a) of this subsection may be increased or decreased by rule and regulation as adopted and promulgated by the department, but the maximum fee that may be charged shall not result in a fee for any license category that exceeds the annual fee set forth in subdivision (a) of this subsection by more than one hundred dollars. The fee charged under subdivision (f) of this subsection may be increased or decreased by rule and regulation as adopted and promulgated by the department, but such fee shall not exceed three dollars times the number of dogs or cats harbored by the licensee over the previous twelve-month period numbering more than ten dogs or cats.

(4) A commercial dog or cat breeder, dealer, boarding kennel, or pet shop shall pay the annual fee to the department on or before April 1 of each year. An animal control facility, animal rescue, or animal shelter shall pay the annual fee to the department on or before October 1 of each year. Failure to pay the annual fee by the due date shall result in a late fee equal to twenty percent of the annual fee due and payable each month, not to exceed one hundred percent of such fee, in addition to the annual fee. The purpose of the late fee is to pay for the administrative costs associated with the collection of fees under this section. The assessment of the late fee shall not prohibit the director from taking any other action as provided in the act.

(5) An applicant, a licensee, or a person the department has reason to believe is an operator and required to obtain a license under this section shall make any applicable premises available for inspection pursuant to section 54-628 during normal business hours.

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

(7) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund.

**Source:** Laws 2000, LB 825, § 3; Laws 2003, LB 233, § 2; Laws 2003, LB 274, § 3; Laws 2004, LB 1002, § 2; Laws 2006, LB 856, § 14; Laws 2007, LB12, § 2; Laws 2009, LB241, § 3; Laws 2010, LB910, § 6; Laws 2012, LB427, § 3; Laws 2015, LB360, § 15.

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

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

**Source:** Laws 2009, LB241, § 4; Laws 2010, LB910, § 7.

**54-628 Inspection program; department; powers; reinspection fee; prohibited acts; penalty.**

(1) The department shall inspect all licensees at least once in a twenty-four-month period to determine whether the licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act.

(2) Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the department shall be available for temporary reassignment as needed to other activities and functions of the department in the event of a livestock disease emergency or any other threat to livestock or public health.

(3) When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant, licensee, or person the department has reason to believe is an operator, together with written notice to comply within the time limit established by the department and set out in such notice. If the department performs a reinspection for the purpose of determining if an operator has complied within the time limit for compliance established pursuant to this subsection or has complied with section 54-628.01 or if the inspector must return to the operator's location because the operator was not available within a reasonable time as required by subsection (4) of this section, the applicant,

licensee, or person the department has reason to believe is an operator shall pay a reinspection fee of one hundred fifty dollars together with the mileage of the inspector at the rate provided in section 81-1176. The purpose of the reinspection fee is to pay for the administrative costs associated with the additional inspection. Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund. The assessment of the reinspection fee shall not prohibit the director from taking any other action as provided in the act.

(4) The department, at its discretion, may make unannounced inspections of any applicant, licensee, or person the department has reason to believe is an operator during normal business hours. An applicant, a licensee, and any person the department has reason to believe is an operator shall provide the department, in writing, and keep updated if there is any change, a telephone number where the operator can be reached during normal business hours. The applicant, licensee, or person the department has reason to believe is an operator shall provide a person over the age of nineteen to be available at the operation for the purpose of allowing the department to perform an inspection.

(5) If deemed necessary under the act or any rule or regulation adopted and promulgated pursuant to the act, the department may, for purposes of inspection, enter, without being subject to any action for trespass or damages, the premises of any applicant, licensee, or person the department has reason to believe is an operator, during normal business hours and in a reasonable manner, including all premises in or upon which dogs or cats are housed, harbored, sold, exchanged, or leased or are suspected of being housed, harbored, sold, exchanged, or leased.

(6) Pursuant to an inspection under the act, the department may:

(a) Enter and have full access to all premises where dogs or cats regulated under the act are harbored or housed or are suspected of being harbored or housed;

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

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

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

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

(7) For purposes of this section, the private residence of any applicant, licensee, or person the department has reason to believe is an operator shall be available for purposes of inspection only if dogs or cats are housed in a primary enclosure within the residence, including a room in such residence, and only such portion of the residence that is used as a primary enclosure shall be open to an inspection pursuant to this section.

(8) An applicant, licensee, or person the department has reason to believe is an operator shall not seek to avoid inspection by hiding dogs or cats regulated under the act in a private residence, on someone else's property, or at any other location. An applicant, licensee, or person the department has reason to believe is an operator shall provide full and accurate information to the department regarding the location of all dogs or cats harbored by the operator.

(9) Any applicant, licensee, or person the department has reason to believe is an operator who intentionally refuses to answer the door, fails to be available as provided in subsection (4) of this section, fails to comply with subsection (8) of this section, or otherwise obstructs the department's attempt to perform an inspection shall be in violation of section 54-634 and subject to an administrative fine or other proceedings as provided in section 54-633 or 54-634.

**Source:** Laws 2000, LB 825, § 4; Laws 2007, LB12, § 3; Laws 2009, LB241, § 5; Laws 2015, LB360, § 16.

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

(1) The director may issue a stop-movement order if he or she has reasonable cause to believe that there exists (a) noncompliance with the Commercial Dog and Cat Operator Inspection Act or any rule or regulation adopted and promulgated pursuant to the act, including, but not limited to, unreasonable sanitation or housing conditions, failure to comply with standards for handling, care, treatment, or transportation for dogs or cats, operating without a license, or interfering with the department in the performance of its duties, or (b) any condition that, without medical attention, provision of shelter, facility maintenance or improvement, relocation of animals, or other management intervention, poses a significant threat to the health or safety of the dogs or cats owned or harbored by a violator.

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

(3) Pursuant to the stop-movement order, the department shall have the authority to enter the premises to inspect and determine if the dogs or cats subject to the order or the facilities used to house or transport such dogs or cats are kept and maintained in compliance with the requirements of the act and the rules and regulations adopted and promulgated pursuant to the act or if any management intervention imposed by the stop-movement order is being implemented to mitigate conditions posing a significant threat to the health or safety of dogs or cats harbored or owned by a violator. The department shall not be liable for any costs incurred by the violator or any personnel of the violator due to such departmental action or in enforcing the stop-movement order. The department shall be reimbursed by the violator for the actual costs incurred by the department in issuing and enforcing any stop-movement order.

(4) A stop-movement order shall include:

(a) A description of the nature of the violations of the act or any rule or regulation adopted and promulgated pursuant to the act;

(b) If applicable, a description of conditions that pose a significant threat to the health or safety of the dogs or cats owned or harbored by the violator;

(c) The action necessary to bring the violator into compliance with the act and the rules and regulations adopted and promulgated pursuant to the act or, if applicable, to mitigate conditions posing a significant threat to the health and safety of the dogs or cats harbored or owned by the violator;

(d) Notice that if violations of the act or any rule or regulation or any conditions that pose a significant threat to the health or safety of the dogs or cats owned or harbored by the violator persist, the department may refer the matter to appropriate law enforcement for investigation and potential prosecution pursuant to Chapter 28, article 10; and

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

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

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

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

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

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

(e) Maintain on the premises any dog or cat subject to the order, except that a dog or cat under one year of age under contract to an individual prior to the issuance of the order may be delivered to the individual pursuant to the contractual obligation. The violator shall provide to the department information identifying the dog or cat and the name, address, and telephone number of the individual purchasing the dog or cat. The department may contact the purchaser to ascertain the date of the purchase agreement to ensure that the dog or cat was sold prior to the stop-movement order and to determine that he or she did purchase such dog or cat. No additional dogs or cats shall be transferred onto the premises without written approval of the department.

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

**Source:** Laws 2009, LB241, § 6; Laws 2015, LB360, § 17.



**54-628.02 Violation of act, rule or regulation, or order of director; proceedings authorized.**

Whenever the director has reason to believe that any person has violated any provision of the Commercial Dog and Cat Operator Inspection Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the director, the director may issue a notice of hearing as provided in section 54-632 requiring the person to appear before the director to (1) show cause why an order should not be entered requiring such person to cease and desist from the violation charged, (2) determine whether an administrative fine should be imposed or levied against the person pursuant to subsection (2) of section 54-633, or (3) determine whether the person fails to qualify for a license pursuant to section 54-630. Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal actions according to law.

**Source:** Laws 2015, LB360, § 18.

**54-629 Rules and regulations.**

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

**Source:** Laws 2000, LB 825, § 5; Laws 2007, LB12, § 4; Laws 2009, LB241, § 7.

**54-630 Application; denial; grounds; appeal.**

(1) Before the department approves an application for a license, an inspector of the department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. Except as provided in subsection (2) of this section, an applicant who qualifies shall be issued a license.

(2) The department may deny an application for a license as a commercial dog or cat breeder, a dealer, a boarding kennel, an animal control facility, an animal shelter, an animal rescue, or a pet shop upon a finding that the applicant is unsuited to perform the obligations of a licensee. The applicant shall be determined unsuited to perform the obligations of a licensee if the department finds that the applicant has deliberately misrepresented or concealed any information provided on or with the application or any other information provided to the department under this section or that within the previous five years the applicant:

(a) Has been convicted of any law regarding the disposition or treatment of dogs or cats in any jurisdiction; or

(b) Has operated a breeder facility under a license or permit issued by any jurisdiction that has been revoked, suspended, or otherwise subject to a disciplinary proceeding brought by the licensing authority in that jurisdiction if such proceeding resulted in the applicant having voluntarily surrendered a license or permit to avoid disciplinary sanctions.

(3) In addition to the application, the department may require the applicant to provide additional documentation pertinent to the department's determination of the applicant's suitability to perform the duties of a licensee under the act.

(4) An applicant who is denied a license under this section shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license pursuant to the act and the rules and regulations adopted and promulgated by the department and should be issued a license. All such hearings shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2000, LB 825, § 6; Laws 2007, LB12, § 5; Laws 2012, LB427, § 4; Laws 2015, LB360, § 19.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**54-631 Licensee; duties; disciplinary actions.**

(1) A licensee under the Commercial Dog and Cat Operator Inspection Act shall comply with the act, the rules and regulations, and any order of the director issued pursuant thereto. The licensee shall not interfere with the department in the performance of its duties.

(2) A licensee may be put on probation requiring such licensee to comply with the conditions set out in an order of probation issued by the director, may be ordered to cease and desist due to a failure to comply, or may be ordered to pay an administrative fine pursuant to section 54-633 after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why an order should not be issued; and

(c) The director finds that issuing an order is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(3) A license may be suspended after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(4) A license may be immediately suspended and the director may order the operation of the licensee closed prior to hearing when:

(a) The director determines that there is a significant threat to the health or safety of the dogs or cats harbored or owned by the licensee; and

(b) The licensee receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the licensee may request in writing a date for a hearing, and the director shall consider the interests of the licensee when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a licensee does not request a hearing date within the fifteen-day period, the director shall establish a hearing date and notify the licensee of the date and time of such hearing.

(5) A license may be revoked after:

(a) The director determines the licensee has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(6) The operation of any licensee which has been suspended shall close and remain closed until the license is reinstated. Any operation for which the license has been revoked shall close and remain closed until a new license is issued.

(7) The director may terminate proceedings undertaken pursuant to this section at any time if the reasons for such proceedings no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a licensee may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings undertaken pursuant to this section shall not preclude the department from seeking other civil or criminal actions.

**Source:** Laws 2000, LB 825, § 7; Laws 2007, LB12, § 6.

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

(1) Any notice or order provided for in the Commercial Dog and Cat Operator Inspection Act shall be properly served when it is personally served on the applicant, licensee, or violator or on the person authorized by the applicant or licensee to receive notices and orders of the department or when it is sent by certified or registered mail, return receipt requested, to the last-known address of the applicant, licensee, or violator 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) A notice to comply with the act or the rules and regulations adopted and promulgated pursuant to the act shall set forth the acts or omissions with which the applicant, licensee, or violator is charged.

(3) A notice of the right to a hearing shall set forth the time and place of the hearing except as otherwise provided in subsection (4) of this section and section 54-631. A notice of the right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section. A notice of the licensee's right to a hearing shall include notice to the licensee that the license may be subject to sanctions as provided in section 54-631.

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

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

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

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

**Source:** Laws 2000, LB 825, § 8; Laws 2007, LB12, § 7; Laws 2009, LB241, § 8; Laws 2015, LB360, § 20.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **54-633 Enforcement powers; administrative fine.**

(1) In order to ensure compliance with the Commercial Dog and Cat Operator Inspection Act, the department may apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order of the director issued pursuant thereto. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant relief upon good cause shown. Relief may be granted

notwithstanding the existence of any other remedy at law and shall be granted without bond.

The county attorney of the county in which such violations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under this section to be instituted and pursued without delay.

(2) The department may impose an administrative fine of not more than five thousand dollars for any violation of the act or the rules and regulations adopted and promulgated under the act. Each violation of the act or such rules and regulations shall constitute a separate offense for purposes of this subsection.

**Source:** Laws 2000, LB 825, § 9; Laws 2006, LB 856, § 15; Laws 2007, LB12, § 8; Laws 2015, LB360, § 21.

**54-633.01 Special investigator; powers; referral to another law enforcement officer.**

If the director has reason to believe that any alleged violation of the Commercial Dog and Cat Operator Inspection Act, any alleged violation of the rules and regulations of the department, any alleged violation of an order of the director, or any other existing condition posing a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or a licensee constitutes cruel neglect, abandonment, or cruel mistreatment pursuant to section 28-1009, the director may direct a special investigator employed by the department as authorized pursuant to section 81-201 to exercise the authorities of a law enforcement officer pursuant to sections 28-1011 and 28-1012 with respect to the dogs or cats or may request any other law enforcement officer as defined in section 28-1008 to inspect, care for, or impound the dogs or cats pursuant to sections 28-1011 and 28-1012. Any assignment of a special investigator by the director or referral to another law enforcement officer pursuant to this section shall be in cooperation and coordination with appropriate law enforcement agencies, political subdivisions, animal shelters, humane societies, and other appropriate entities, public or private, to provide for the care, shelter, and disposition of animals impounded pursuant to this section.

**Source:** Laws 2015, LB360, § 22.

**54-634 Violation; penalty.**

(1) It is unlawful for a person to operate without a valid license or operate while a license is revoked or suspended if a license is required by the Commercial Dog and Cat Operator Inspection Act. A licensee shall not operate in any manner which is not in conformity with the act or the rules and regulations adopted and promulgated pursuant thereto or interfere with the duties of the department or any final order of the director pursuant to the act.

(2) Any person who violates any provision of the act is guilty of a Class I misdemeanor.

**Source:** Laws 2000, LB 825, § 10.

**54-634.01 Prohibited acts.**

It shall be a violation of the Commercial Dog and Cat Operator Inspection Act for any person to (1) deny access to any officer, agent, employee, or

appointee of the department or offer any resistance to, thwart, or hinder such persons by misrepresentation or concealment, (2) violate a stop-movement order issued under section 54-628.01, (3) fail to disclose all locations housing dogs or cats owned or controlled by such person, or (4) fail to pay any administrative fine levied pursuant to section 54-633.

**Source:** Laws 2009, LB241, § 9.

**54-635 Commercial Dog and Cat Operator Inspection Program Cash Fund; created; use; investment.**

The Commercial Dog and Cat Operator Inspection Program Cash Fund is created and shall consist of money appropriated by the Legislature, gifts, grants, costs, fees, or charges from any source, including federal, state, public, and private sources. The money shall be used to carry out the Commercial Dog and Cat Operator Inspection 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 2000, LB 825, § 11; Laws 2016, LB909, § 3.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**54-636 Department; enforcement powers.**

The department may cooperate with the Secretary of Agriculture in carrying out applicable federal law and the regulations issued by the Secretary of Agriculture under such law. The department may enter into contracts with any person to implement any or all of the provisions of the Commercial Dog and Cat Operator Inspection Act.

**Source:** Laws 2000, LB 825, § 12.

**54-637 Information on spaying and neutering; requirements.**

(1) Every dealer, commercial dog or cat breeder, animal shelter, animal rescue, animal control facility, or pet shop or any other retailer, who transfers ownership of a dog or cat to an ultimate consumer, shall deliver to the ultimate consumer of each dog or cat at the time of sale, written material, in a form determined by such seller, containing information on the benefits of spaying and neutering. The written material shall include recommendations on establishing a relationship with a veterinarian, information on early-age spaying and neutering, the health benefits associated with spaying and neutering pets, the importance of minimizing the risk of homeless or unwanted animals, and the need to comply with applicable license laws.

(2) The delivering of any model materials prepared by the Pet Industry Joint Advisory Council or the Nebraska Humane Society shall satisfy the requirements of subsection (1) of this section.

**Source:** Laws 2003, LB 274, § 4; Laws 2010, LB910, § 8; Laws 2012, LB427, § 5.

**54-638 Provision for spaying or neutering; when.**

Provision shall be made for spaying or neutering all dogs and cats released for adoption or purchase from any public or private animal shelter, animal

rescue, or animal control facility operated by a humane society, a county, a city, or another political subdivision. Such provision may be made by:

- (1) Causing the dog or cat to be spayed or neutered by a licensed veterinarian before releasing the dog or cat for adoption or purchase; or
- (2) Entering into a written agreement with the adopter or purchaser of the dog or cat, guaranteeing that spaying or neutering will be performed by a licensed veterinarian in compliance with an agreement which shall contain the following information:
  - (a) The date of the agreement;
  - (b) The name, address, and signature of the releasing entity and the adopter or purchaser;
  - (c) A description of the dog or cat to be adopted or purchased;
  - (d) A statement, in conspicuous bold print, that spaying or neutering of the dog or cat is required pursuant to this section; and
  - (e) The date by which the spaying or neutering will be completed, which date shall be (i) in the case of an adult dog or cat, the thirtieth day after the date of adoption or purchase or (ii) in the case of a pup or kitten, either (A) the thirtieth day after a specified date estimated to be the date the pup or kitten will reach six months of age or (B) if the releasing entity has a written policy recommending spaying or neutering of certain pups or kittens at an earlier date, the thirtieth day after such date.

**Source:** Laws 2003, LB 274, § 5; Laws 2010, LB910, § 9.

**54-639 Adopter or purchaser; agreement; requirements.**

An adopter or purchaser who signs an agreement under section 54-638 shall cause the adopted or purchased dog or cat to be spayed or neutered on or before the date stated in the agreement. If such date falls on a Saturday, Sunday, or legal holiday, the date may be extended to the first business day following such date. The releasing entity may extend the date for thirty days upon presentation of a letter or telephone report from a licensed veterinarian, stating that the life or health of the adopted or purchased dog or cat would be jeopardized by spaying or neutering, and such extensions may continue to be granted until such veterinarian determines that spaying or neutering would no longer jeopardize the life or health of the adopted or purchased dog or cat.

**Source:** Laws 2003, LB 274, § 6.

**54-640 Commercial dog or cat breeder; duties.**

A commercial dog or cat breeder shall:

- (1) Maintain housing facilities and primary enclosures in a sanitary condition;
- (2) Enable all dogs and cats to remain dry and clean;
- (3) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;
- (4) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;
- (5) Provide dogs and cats with easy and convenient access to adequate amounts of clean food and water;

(6) Provide dogs with adequate socialization. For purposes of this subdivision, adequate socialization means physical contact with other dogs and with human beings, other than being fed;

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

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

(9) Provide veterinary care without delay when necessary.

**Source:** Laws 2003, LB 274, § 7; Laws 2009, LB241, § 10; Laws 2012, LB427, § 6.

**54-641 Licensees; primary enclosures; requirements.**

The primary enclosures of all licensees shall meet the following requirements:

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

(2) A primary enclosure shall have solid surface flooring or a flooring material that protects the dogs' and cats' feet and legs from injury and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor;

(3) If a primary enclosure has a suspended floor constructed of metal strands, the strands shall either be greater than one-eighth of an inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass; and

(4) The suspended floor of any primary enclosure shall be strong enough so that the floor does not sag or bend between the structural supports.

**Source:** Laws 2003, LB 274, § 8; Laws 2012, LB427, § 7.

**54-641.01 Commercial dog breeder; dogs; opportunity for exercise.**

(1) A commercial dog breeder shall provide dogs with the opportunity for exercise as follows:

(a) A primary enclosure shall have an entry that allows each dog unfettered access to an exercise area that is at least three times the size of the requirements for a primary enclosure. The entry may be closed during cleaning, under direction of a licensed veterinarian, or in the case of inclement weather. The exercise area shall have solid surface flooring or a flooring material that if of mesh or slatted construction does not allow the dog's feet to pass through any openings in the floor. Any exercise area suspended floor constructed of metal strands shall be required to have strands that are greater than one-eighth of an inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass. All suspended flooring shall be strong enough so as not to sag or bend between any structural supports and be of a surface that is easily cleaned and disinfected. The exercise area shall have protection available from wind, rain, and snow if access to the primary enclosure is unavailable; and



(b) Any dog not housed in a primary enclosure that meets the exercise area requirements of subdivision (a) of this subsection shall be provided with the opportunity for exercise according to a plan approved by the attending veterinarian, in writing. The opportunity for exercise shall be accomplished by:

(i) Providing access to a run or open area at a frequency and duration prescribed by the attending veterinarian; or

(ii) Removal of the dogs from the primary enclosure at least twice daily to be walked, allowed to move about freely in an open area, or placed in an exercise area that meets the requirements of subdivision (a) of this subsection.

(2) Subsection (1) of this section shall not apply to:

(a) Any dog that is less than six months of age;

(b) The primary enclosure of a nursing facility that houses any female dog that is due to give birth within the following two weeks or a nursing dog and her puppies;

(c) Any dog that is injured or displays any clinical signs of disease. In such case, any injury or clinical signs of disease shall be noted in the dog's health records and the dog shall be returned to exercise upon recovery from such injury or disease; or

(d) Any dog that is excluded from the exercise requirements of subsection (1) of this section pursuant to a written directive of a licensed veterinarian.

(3) Any primary enclosure newly constructed after October 1, 2012, shall comply with subdivision (1)(a) of this section. A primary enclosure in existence on October 1, 2012, shall not be required to comply with subdivision (1)(a) of this section for the life of such facility.

**Source:** Laws 2012, LB427, § 8.

**54-641.02 Commercial dog breeder; veterinary care; review of health records; duties of breeder.**

(1) A commercial dog breeder shall ensure that each dog under his or her care, supervision, or control receives adequate veterinary care. A commercial dog breeder's written veterinary care plan shall provide for, in addition to requirements prescribed by rule and regulation of the department:

(a) The maintenance of individual health records for each dog bought, raised, or otherwise obtained, held, kept, maintained, sold, donated, or otherwise disposed of, including by death or euthanasia, except that litter health records may be kept on litters when litter mates are treated with the same medication or procedure;

(b) Establishment of a program of disease control and prevention, pest and parasite control, before and after procedure care, nutrition, and euthanasia supervised by the attending veterinarian. Such program shall provide for regularly scheduled onsite visits to the facility by the veterinarian and shall be annually reviewed and updated by the veterinarian at the time of an onsite visit that includes the veterinarian's walk-through of the facility and observation by the veterinarian of dogs under the commercial dog breeder's care, supervision, or control; and

(c) A wellness examination by a licensed veterinarian of each breeding dog at least once every three years, to include a basic physical and dental examination and corresponding notations entered into the dog's health records. Such

examination shall not require laboratory analysis unless directed by the veterinarian.

(2) During regularly scheduled inspections of a commercial dog breeder's facility conducted by the department, the health records of a random sample of at least five percent of the breeding dogs shall be reviewed to verify that such records correspond to the dog's permanent identification and verify that the health records are properly maintained.

(3) For each dog under the commercial dog breeder's care, supervision, or control, the breeder shall:

(a) Ensure that all breeding dogs receive regular grooming. Coat matting shall not exceed ten percent, and nails shall be trimmed short enough to ensure the comfort of the dog;

(b) Contact a licensed veterinarian without delay after an occurrence of a serious or life-threatening injury or medical condition of such dog. The dog shall be treated as prescribed by the veterinarian;

(c) Ensure that all surgical births or other surgical procedures shall be performed by a licensed veterinarian using anesthesia. Commercial dog breeders may remove dew claws and perform tail docking under sterile conditions within the first seven days of the dog's life. Wounds shall be treated and monitored by the breeder; and

(d) Ensure that, if euthanasia is necessary, it shall be performed by a licensed veterinarian in accordance with recommendations for the humane euthanization of dogs as published by the American Veterinary Medical Association.

**Source:** Laws 2012, LB427, § 9.

#### **54-641.03 Breeding dog; microchip; identification.**

Each breeding dog shall be identified by the implantation of a microchip, and each dog's health records shall accurately record the appropriate identification. The department may by rule or regulation require identification of any dog by tag, tattoo, or other method if the microchip system is determined to be ineffective. A commercial dog breeder licensed prior to October 1, 2012, who utilizes a method or methods of identification other than microchipping as authorized by rule and regulation of the department prior to October 1, 2012, may continue to utilize such method or methods.

**Source:** Laws 2012, LB427, § 10.

#### **54-642 Department; submit report of costs and revenue.**

On or before November 1 of each year, the department shall submit electronically a report to the Legislature in sufficient detail to document all costs incurred in the previous fiscal year in carrying out the Commercial Dog and Cat Operator Inspection Act. The report shall identify costs incurred by the department to administer the act and shall detail costs incurred by primary activity. The department shall also provide a breakdown by category of all revenue credited to the Commercial Dog and Cat Operator Inspection Program Cash Fund in the previous fiscal year. The Agriculture Committee and Appropriations Committee of the Legislature shall review the report to ascertain program activity levels and to determine funding requirements of the program.

**Source:** Laws 2006, LB 856, § 16; Laws 2012, LB782, § 82.

**54-643 Administrative fines; disposition; lien; collection.**

(1) All money collected by the department pursuant to section 54-633 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any administrative fine levied pursuant to section 54-633 which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property.

**Source:** Laws 2007, LB12, § 9.

**(d) DOG AND CAT PURCHASE PROTECTION ACT****54-644 Act, how cited.**

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

**Source:** Laws 2009, LB241, § 11.

**54-645 Terms, defined.**

For purposes of the Dog and Cat Purchase Protection Act:

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

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

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

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

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

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

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

(b) Serious health problem does not include (i) parvovirus if the diagnosis of parvovirus is made after the seven-business-day requirement in subsection (1) of section 54-647 or (ii) any other contagious disease that causes severe illness

or death after ten calendar days after delivery of the pet animal to the purchaser.

**Source:** Laws 2009, LB241, § 12; Laws 2010, LB910, § 10; Laws 2012, LB427, § 11; Laws 2020, LB344, § 65.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Source:** Laws 2009, LB241, § 13; Laws 2012, LB427, § 12.

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

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

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

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

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

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

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

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

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

(4) For purposes of this section, veterinary fees shall be deemed reasonable if the service is appropriate for the diagnosis and treatment of the serious health

problem and the cost of the service is comparable to similar services provided by licensed veterinarians in close proximity to the treating veterinarian.

**Source:** Laws 2009, LB241, § 14.

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

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

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

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

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

**Source:** Laws 2009, LB241, § 15.

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

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

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

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

**Source:** Laws 2009, LB241, § 16.

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

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

**Source:** Laws 2009, LB241, § 17.

**ARTICLE 7**

**PROTECTION OF HEALTH**

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section  
54-701. Repealed. Laws 2020, LB344, § 82.

## PROTECTION OF HEALTH

### Section

54-701.01.	Repealed. Laws 2020, LB344, § 82.
54-701.02.	Repealed. Laws 2020, LB344, § 82.
54-701.03.	Repealed. Laws 2020, LB344, § 82.
54-702.	Repealed. Laws 2020, LB344, § 82.
54-702.01.	Repealed. Laws 2020, LB344, § 82.
54-702.02.	Repealed. Laws 1965, c. 8, § 58.
54-702.03.	Repealed. Laws 1965, c. 8, § 58.
54-703.	Repealed. Laws 2020, LB344, § 82.
54-704.	Repealed. Laws 2020, LB344, § 82.
54-705.	Repealed. Laws 2020, LB344, § 82.

### (b) BOVINE TUBERCULOSIS ACT

54-706.	Repealed. Laws 2007, LB 110, § 20.
54-706.01.	Repealed. Laws 2020, LB344, § 82.
54-706.02.	Repealed. Laws 2020, LB344, § 82.
54-706.03.	Repealed. Laws 2020, LB344, § 82.
54-706.04.	Repealed. Laws 2020, LB344, § 82.
54-706.05.	Repealed. Laws 2020, LB344, § 82.
54-706.06.	Repealed. Laws 2020, LB344, § 82.
54-706.07.	Repealed. Laws 2020, LB344, § 82.
54-706.08.	Repealed. Laws 2020, LB344, § 82.
54-706.09.	Repealed. Laws 2020, LB344, § 82.
54-706.10.	Repealed. Laws 2020, LB344, § 82.
54-706.11.	Repealed. Laws 2020, LB344, § 82.
54-706.12.	Bovine Tuberculosis Cash Fund; created; use; investment; termination.
54-706.13.	Repealed. Laws 2020, LB344, § 82.
54-706.14.	Repealed. Laws 2020, LB344, § 82.
54-706.15.	Repealed. Laws 2020, LB344, § 82.
54-706.16.	Repealed. Laws 2020, LB344, § 82.
54-706.17.	Repealed. Laws 2020, LB344, § 82.
54-707.	Repealed. Laws 2007, LB 110, § 20.
54-708.	Repealed. Laws 2007, LB 110, § 20.
54-709.	Repealed. Laws 2007, LB 110, § 20.
54-710.	Repealed. Laws 2007, LB 110, § 20.
54-711.	Repealed. Laws 2007, LB 110, § 20.
54-712.	Repealed. Laws 2007, LB 110, § 20.
54-713.	Repealed. Laws 2007, LB 110, § 20.
54-714.	Repealed. Laws 2007, LB 110, § 20.
54-715.	Repealed. Laws 2007, LB 110, § 20.
54-716.	Repealed. Laws 2007, LB 110, § 20.
54-717.	Repealed. Laws 2007, LB 110, § 20.
54-718.	Repealed. Laws 2007, LB 110, § 20.
54-719.	Repealed. Laws 2007, LB 110, § 20.
54-720.	Repealed. Laws 2007, LB 110, § 20.
54-721.	Repealed. Laws 2007, LB 110, § 20.
54-722.	Repealed. Laws 2007, LB 110, § 20.

### (c) SCABIES

54-723.	Transferred to section 54-1412.
54-724.	Transferred to section 54-1413.
54-724.01.	Repealed. Laws 2015, LB 91, § 1.
54-724.02.	Repealed. Laws 2015, LB 91, § 1.

### (d) GENERAL PROVISIONS

54-725.	Transferred to section 28-1304.01.
54-726.	Repealed. Laws 1983, LB 264, § 3.
54-726.01.	Repealed. Laws 1985, LB 23, § 1.
54-726.02.	Repealed. Laws 1983, LB 264, § 3.
54-726.03.	Repealed. Laws 1985, LB 23, § 1.
54-726.04.	Repealed. Laws 2015, LB 91, § 1.
54-727.	Repealed. Laws 1969, c. 446, § 10.

## LIVESTOCK

Section	
54-727.01.	Repealed. Laws 1969, c. 446, § 10.
54-727.02.	Repealed. Laws 1969, c. 446, § 10.
54-727.03.	Repealed. Laws 1969, c. 446, § 10.
54-727.04.	Repealed. Laws 1969, c. 446, § 10.
54-727.05.	Repealed. Laws 1969, c. 446, § 10.
54-728.	Repealed. Laws 1969, c. 446, § 10.
54-728.01.	Repealed. Laws 1969, c. 446, § 10.
54-729.	Repealed. Laws 1969, c. 446, § 10.
54-729.01.	Repealed. Laws 1969, c. 446, § 10.
54-730.	Repealed. Laws 1969, c. 446, § 10.
54-731.	Repealed. Laws 1969, c. 446, § 10.
54-732.	Repealed. Laws 1969, c. 446, § 10.
54-733.	Repealed. Laws 1969, c. 446, § 10.
54-734.	Repealed. Laws 1969, c. 446, § 10.
54-735.	Repealed. Laws 1953, c. 184, § 9.
54-736.	Repealed. Laws 1969, c. 449, § 17.
54-737.	Repealed. Laws 1969, c. 449, § 17.
54-738.	Repealed. Laws 1969, c. 449, § 17.
54-739.	Repealed. Laws 1969, c. 449, § 17.
54-740.	Repealed. Laws 1969, c. 449, § 17.
54-740.01.	Repealed. Laws 1969, c. 449, § 17.
54-740.02.	Repealed. Laws 1969, c. 449, § 17.
54-741.	Repealed. Laws 1969, c. 449, § 17.
54-742.	Repealed. Laws 2020, LB344, § 82.
54-743.	Repealed. Laws 2020, LB344, § 82.
54-744.	Repealed. Laws 2020, LB344, § 82.
54-744.01.	Repealed. Laws 2020, LB344, § 82.
54-745.	Repealed. Laws 2020, LB344, § 82.
54-746.	Repealed. Laws 2020, LB344, § 82.
54-747.	Repealed. Laws 2020, LB344, § 82.
54-748.	Repealed. Laws 1987, LB 20, § 9.
54-749.	Repealed. Laws 1983, LB 264, § 3.
54-750.	Repealed. Laws 2020, LB344, § 82.
54-751.	Repealed. Laws 2020, LB344, § 82.
54-752.	Repealed. Laws 2020, LB344, § 82.
54-753.	Repealed. Laws 2020, LB344, § 82.
54-753.01.	Repealed. Laws 2020, LB344, § 82.
54-753.02.	Repealed. Laws 1980, LB 631, § 6.
54-753.03.	Repealed. Laws 1980, LB 631, § 6.
54-753.04.	Repealed. Laws 2020, LB344, § 82.
54-753.05.	Importation of livestock; embargo; violation; penalty.
54-753.06.	Transferred to section 54-7,109.
54-753.07.	Repealed. Laws 1980, LB 631, § 6.
54-753.08.	Repealed. Laws 1980, LB 631, § 6.
54-753.09.	Repealed. Laws 1980, LB 631, § 6.
54-753.10.	Repealed. Laws 1980, LB 631, § 6.

### (e) ANTHRAX

54-754.	Repealed. Laws 2009, LB 99, § 21.
54-755.	Repealed. Laws 2009, LB 99, § 21.
54-756.	Repealed. Laws 2009, LB 99, § 21.
54-757.	Repealed. Laws 2009, LB 99, § 21.
54-758.	Repealed. Laws 2009, LB 99, § 21.
54-759.	Repealed. Laws 2009, LB 99, § 21.
54-760.	Repealed. Laws 2009, LB 99, § 21.
54-761.	Repealed. Laws 2009, LB 99, § 21.
54-762.	Repealed. Laws 2009, LB 99, § 21.
54-763.	Repealed. Laws 2009, LB 99, § 21.
54-764.	Repealed. Laws 2020, LB344, § 82.
54-764.01.	Repealed. Laws 1965, c. 326, § 31.
54-764.02.	Repealed. Laws 1965, c. 326, § 31.



## PROTECTION OF HEALTH

- Section
- 54-765. Repealed. Laws 2020, LB344, § 82.  
54-766. Repealed. Laws 2020, LB344, § 82.  
54-767. Repealed. Laws 2020, LB344, § 82.  
54-768. Repealed. Laws 2020, LB344, § 82.  
54-769. Repealed. Laws 2020, LB344, § 82.  
54-770. Repealed. Laws 2020, LB344, § 82.  
54-771. Repealed. Laws 2020, LB344, § 82.  
54-772. Repealed. Laws 2020, LB344, § 82.  
54-773. Repealed. Laws 2020, LB344, § 82.  
54-774. Repealed. Laws 2020, LB344, § 82.  
54-775. Repealed. Laws 2020, LB344, § 82.  
54-776. Repealed. Laws 2020, LB344, § 82.  
54-777. Repealed. Laws 2020, LB344, § 82.  
54-777.01. Repealed. Laws 1969, c. 449, § 17.  
54-777.02. Repealed. Laws 1969, c. 449, § 17.  
54-777.03. Repealed. Laws 1969, c. 449, § 17.  
54-778. Anthrax Control Act Cash Fund; created; use; investment; termination.  
54-779. Repealed. Laws 2020, LB344, § 82.  
54-780. Repealed. Laws 2020, LB344, § 82.  
54-781. Repealed. Laws 2020, LB344, § 82.  
54-782. Repealed. Laws 1969, c. 449, § 17.  
54-783. Repealed. Laws 1969, c. 449, § 17.  
54-784. Repealed. Laws 1969, c. 449, § 17.
- (f) IMPORT CONTROL
- 54-784.01. Repealed. Laws 2020, LB344, § 82.  
54-785. Repealed. Laws 2020, LB344, § 82.  
54-786. Repealed. Laws 2020, LB344, § 82.  
54-787. Repealed. Laws 2020, LB344, § 82.  
54-788. Repealed. Laws 2020, LB344, § 82.  
54-789. Repealed. Laws 2020, LB344, § 82.  
54-790. Repealed. Laws 2020, LB344, § 82.  
54-791. Repealed. Laws 2020, LB344, § 82.  
54-792. Repealed. Laws 2020, LB344, § 82.  
54-793. Repealed. Laws 2020, LB344, § 82.  
54-794. Repealed. Laws 2020, LB344, § 82.  
54-795. Repealed. Laws 2020, LB344, § 82.  
54-796. Repealed. Laws 2020, LB344, § 82.
- (g) LIVESTOCK CERTIFICATION PROGRAM
- 54-797. Livestock certification program; department; duties; registry.  
54-798. Livestock certification program; application; costs.  
54-799. Livestock certification program; livestock producer; powers.  
54-7,100. Livestock certification program; removal from registry; procedure.  
54-7,101. Livestock certification program; department; immunity.  
54-7,102. Livestock certification program; information; disclosure; when.  
54-7,103. Livestock certification program; department; powers.
- (h) TRANSPORTATION
- 54-7,104. Livestock; care.
- (i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS
- 54-7,105. Act, how cited; purpose.  
54-7,105.01. Terms, defined.  
54-7,106. Permit; notification requirements; application; denial; grounds; prohibited acts.  
54-7,107. Records; contents; access by department.  
54-7,108. Prohibited transfers; certificate of veterinary inspection; duties of exotic animal auction or exchange venue organizer; requirements for certain animals.  
54-7,109. Compliance with game laws required.  
54-7,110. Repealed. Laws 2020, LB344, § 82.

(a) GENERAL POWERS AND DUTIES OF  
DEPARTMENT OF AGRICULTURE

**54-701 Repealed. Laws 2020, LB344, § 82.**

**54-701.01 Repealed. Laws 2020, LB344, § 82.**

**54-701.02 Repealed. Laws 2020, LB344, § 82.**

**54-701.03 Repealed. Laws 2020, LB344, § 82.**

**54-702 Repealed. Laws 2020, LB344, § 82.**

**54-702.01 Repealed. Laws 2020, LB344, § 82.**

**54-702.02 Repealed. Laws 1965, c. 8, § 58.**

**54-702.03 Repealed. Laws 1965, c. 8, § 58.**

**54-703 Repealed. Laws 2020, LB344, § 82.**

**54-704 Repealed. Laws 2020, LB344, § 82.**

**54-705 Repealed. Laws 2020, LB344, § 82.**

## (b) BOVINE TUBERCULOSIS ACT

**54-706 Repealed. Laws 2007, LB 110, § 20.**

**54-706.01 Repealed. Laws 2020, LB344, § 82.**

**54-706.02 Repealed. Laws 2020, LB344, § 82.**

**54-706.03 Repealed. Laws 2020, LB344, § 82.**

**54-706.04 Repealed. Laws 2020, LB344, § 82.**

**54-706.05 Repealed. Laws 2020, LB344, § 82.**

**54-706.06 Repealed. Laws 2020, LB344, § 82.**

**54-706.07 Repealed. Laws 2020, LB344, § 82.**

**54-706.08 Repealed. Laws 2020, LB344, § 82.**

**54-706.09 Repealed. Laws 2020, LB344, § 82.**

**54-706.10 Repealed. Laws 2020, LB344, § 82.**

**54-706.11 Repealed. Laws 2020, LB344, § 82.**

**54-706.12 Bovine Tuberculosis Cash Fund; created; use; investment; termination.**

The Bovine Tuberculosis Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Bovine Tuberculosis Act. Any money in the fund available for investment shall be invested by the state investment officer

pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund terminates on November 14, 2020, and the State Treasurer shall transfer any money in the fund on such date to the Animal Health and Disease Control Cash Fund.

**Source:** Laws 2007, LB110, § 12; Laws 2020, LB344, § 66.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

- 54-706.13 Repealed. Laws 2020, LB344, § 82.**
- 54-706.14 Repealed. Laws 2020, LB344, § 82.**
- 54-706.15 Repealed. Laws 2020, LB344, § 82.**
- 54-706.16 Repealed. Laws 2020, LB344, § 82.**
- 54-706.17 Repealed. Laws 2020, LB344, § 82.**
- 54-707 Repealed. Laws 2007, LB 110, § 20.**
- 54-708 Repealed. Laws 2007, LB 110, § 20.**
- 54-709 Repealed. Laws 2007, LB 110, § 20.**
- 54-710 Repealed. Laws 2007, LB 110, § 20.**
- 54-711 Repealed. Laws 2007, LB 110, § 20.**
- 54-712 Repealed. Laws 2007, LB 110, § 20.**
- 54-713 Repealed. Laws 2007, LB 110, § 20.**
- 54-714 Repealed. Laws 2007, LB 110, § 20.**
- 54-715 Repealed. Laws 2007, LB 110, § 20.**
- 54-716 Repealed. Laws 2007, LB 110, § 20.**
- 54-717 Repealed. Laws 2007, LB 110, § 20.**
- 54-718 Repealed. Laws 2007, LB 110, § 20.**
- 54-719 Repealed. Laws 2007, LB 110, § 20.**
- 54-720 Repealed. Laws 2007, LB 110, § 20.**
- 54-721 Repealed. Laws 2007, LB 110, § 20.**
- 54-722 Repealed. Laws 2007, LB 110, § 20.**

(c) SCABIES

- 54-723 Transferred to section 54-1412.**
- 54-724 Transferred to section 54-1413.**
- 54-724.01 Repealed. Laws 2015, LB 91, § 1.**
- 54-724.02 Repealed. Laws 2015, LB 91, § 1.**

(d) GENERAL PROVISIONS

- 54-725 Transferred to section 28-1304.01.
- 54-726 Repealed. Laws 1983, LB 264, § 3.
- 54-726.01 Repealed. Laws 1985, LB 23, § 1.
- 54-726.02 Repealed. Laws 1983, LB 264, § 3.
- 54-726.03 Repealed. Laws 1985, LB 23, § 1.
- 54-726.04 Repealed. Laws 2015, LB 91, § 1.
- 54-727 Repealed. Laws 1969, c. 446, § 10.
- 54-727.01 Repealed. Laws 1969, c. 446, § 10.
- 54-727.02 Repealed. Laws 1969, c. 446, § 10.
- 54-727.03 Repealed. Laws 1969, c. 446, § 10.
- 54-727.04 Repealed. Laws 1969, c. 446, § 10.
- 54-727.05 Repealed. Laws 1969, c. 446, § 10.
- 54-728 Repealed. Laws 1969, c. 446, § 10.
- 54-728.01 Repealed. Laws 1969, c. 446, § 10.
- 54-729 Repealed. Laws 1969, c. 446, § 10.
- 54-729.01 Repealed. Laws 1969, c. 446, § 10.
- 54-730 Repealed. Laws 1969, c. 446, § 10.
- 54-731 Repealed. Laws 1969, c. 446, § 10.
- 54-732 Repealed. Laws 1969, c. 446, § 10.
- 54-733 Repealed. Laws 1969, c. 446, § 10.
- 54-734 Repealed. Laws 1969, c. 446, § 10.
- 54-735 Repealed. Laws 1953, c. 184, § 9.
- 54-736 Repealed. Laws 1969, c. 449, § 17.
- 54-737 Repealed. Laws 1969, c. 449, § 17.
- 54-738 Repealed. Laws 1969, c. 449, § 17.
- 54-739 Repealed. Laws 1969, c. 449, § 17.
- 54-740 Repealed. Laws 1969, c. 449, § 17.
- 54-740.01 Repealed. Laws 1969, c. 449, § 17.
- 54-740.02 Repealed. Laws 1969, c. 449, § 17.
- 54-741 Repealed. Laws 1969, c. 449, § 17.

- 54-742 Repealed. Laws 2020, LB344, § 82.**
- 54-743 Repealed. Laws 2020, LB344, § 82.**
- 54-744 Repealed. Laws 2020, LB344, § 82.**
- 54-744.01 Repealed. Laws 2020, LB344, § 82.**
- 54-745 Repealed. Laws 2020, LB344, § 82.**
- 54-746 Repealed. Laws 2020, LB344, § 82.**
- 54-747 Repealed. Laws 2020, LB344, § 82.**
- 54-748 Repealed. Laws 1987, LB 20, § 9.**
- 54-749 Repealed. Laws 1983, LB 264, § 3.**
- 54-750 Repealed. Laws 2020, LB344, § 82.**
- 54-751 Repealed. Laws 2020, LB344, § 82.**
- 54-752 Repealed. Laws 2020, LB344, § 82.**
- 54-753 Repealed. Laws 2020, LB344, § 82.**
- 54-753.01 Repealed. Laws 2020, LB344, § 82.**
- 54-753.02 Repealed. Laws 1980, LB 631, § 6.**
- 54-753.03 Repealed. Laws 1980, LB 631, § 6.**
- 54-753.04 Repealed. Laws 2020, LB344, § 82.**

**54-753.05 Importation of livestock; embargo; violation; penalty.**

Any person who shall import livestock or cause livestock to be imported into the State of Nebraska in violation of an embargo issued by the State Veterinarian of Nebraska shall be guilty of a Class IV felony.

**Source:** Laws 1959, c. 255, § 1, p. 889; Laws 1977, LB 39, § 27.

**Cross References**

**Definitions**, where found, see section 54-2902.

Violation of this section held not to defeat registration of judgment obtained in Kansas. *Miller v. Kingsley*, 194 Neb. 123, 230 N.W.2d 472 (1975).

- 54-753.06 Transferred to section 54-7,109.**
- 54-753.07 Repealed. Laws 1980, LB 631, § 6.**
- 54-753.08 Repealed. Laws 1980, LB 631, § 6.**
- 54-753.09 Repealed. Laws 1980, LB 631, § 6.**
- 54-753.10 Repealed. Laws 1980, LB 631, § 6.**

(e) ANTHRAX

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

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

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

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

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

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

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

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

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

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

54-764 Repealed. Laws 2020, LB344, § 82.

54-764.01 Repealed. Laws 1965, c. 326, § 31.

54-764.02 Repealed. Laws 1965, c. 326, § 31.

54-765 Repealed. Laws 2020, LB344, § 82.

54-766 Repealed. Laws 2020, LB344, § 82.

54-767 Repealed. Laws 2020, LB344, § 82.

54-768 Repealed. Laws 2020, LB344, § 82.

54-769 Repealed. Laws 2020, LB344, § 82.

54-770 Repealed. Laws 2020, LB344, § 82.

54-771 Repealed. Laws 2020, LB344, § 82.

54-772 Repealed. Laws 2020, LB344, § 82.

54-773 Repealed. Laws 2020, LB344, § 82.

54-774 Repealed. Laws 2020, LB344, § 82.

54-775 Repealed. Laws 2020, LB344, § 82.

54-776 Repealed. Laws 2020, LB344, § 82.

54-777 Repealed. Laws 2020, LB344, § 82.

54-777.01 Repealed. Laws 1969, c. 449, § 17.

54-777.02 Repealed. Laws 1969, c. 449, § 17.

54-777.03 Repealed. Laws 1969, c. 449, § 17.

**54-778 Anthrax Control Act Cash Fund; created; use; investment; termination.**

The Anthrax Control Act Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall

be used to carry out the Anthrax Control Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund terminates on November 14, 2020, and the State Treasurer shall transfer any money in the fund on such date to the Animal Health and Disease Control Cash Fund.

**Source:** Laws 2009, LB99, § 15; Laws 2020, LB344, § 67.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-779 Repealed. Laws 2020, LB344, § 82.**

**54-780 Repealed. Laws 2020, LB344, § 82.**

**54-781 Repealed. Laws 2020, LB344, § 82.**

**54-782 Repealed. Laws 1969, c. 449, § 17.**

**54-783 Repealed. Laws 1969, c. 449, § 17.**

**54-784 Repealed. Laws 1969, c. 449, § 17.**

(f) IMPORT CONTROL

**54-784.01 Repealed. Laws 2020, LB344, § 82.**

**54-785 Repealed. Laws 2020, LB344, § 82.**

**54-786 Repealed. Laws 2020, LB344, § 82.**

**54-787 Repealed. Laws 2020, LB344, § 82.**

**54-788 Repealed. Laws 2020, LB344, § 82.**

**54-789 Repealed. Laws 2020, LB344, § 82.**

**54-790 Repealed. Laws 2020, LB344, § 82.**

**54-791 Repealed. Laws 2020, LB344, § 82.**

**54-792 Repealed. Laws 2020, LB344, § 82.**

**54-793 Repealed. Laws 2020, LB344, § 82.**

**54-794 Repealed. Laws 2020, LB344, § 82.**

**54-795 Repealed. Laws 2020, LB344, § 82.**

**54-796 Repealed. Laws 2020, LB344, § 82.**

(g) LIVESTOCK CERTIFICATION PROGRAM

**54-797 Livestock certification program; department; duties; registry.**

The Department of Agriculture shall provide voluntary livestock certification programs when requested by a livestock health committee and others when deemed by the department to be beneficial and appropriate for the livestock

industry. The department shall work together with the appropriate livestock producers or groups and the Department of Veterinary and Biomedical Sciences of the University of Nebraska to establish procedures for the certification of participating herds. The Department of Agriculture may maintain a livestock certification registry for each livestock certification program that provides information regarding the voluntary certification program and may include the names of participating livestock producers who have a herd or flock enrolled in the voluntary livestock certification program.

**Source:** Laws 2001, LB 438, § 10; Laws 2020, LB344, § 68.

**Cross References**

**Definitions,** where found, see section 54-2902.

**54-798 Livestock certification program; application; costs.**

A livestock producer may request certification by completing an application for herd certification on a form provided by the department. The livestock producers who choose to participate in a voluntary livestock certification program shall pay the primary costs of the program, including all on-farm testing costs. The department may use funds appropriated by the Legislature, when available, to offset the costs of disease research and laboratory testing when done in conjunction with a voluntary livestock certification program.

**Source:** Laws 2001, LB 438, § 11.

**Cross References**

**Definitions,** where found, see section 54-2902.

**54-799 Livestock certification program; livestock producer; powers.**

A livestock producer who is listed in a livestock certification registry may provide registry and certification information regarding the livestock herd when selling livestock from the herd.

**Source:** Laws 2001, LB 438, § 12.

**Cross References**

**Definitions,** where found, see section 54-2902.

**54-7,100 Livestock certification program; removal from registry; procedure.**

(1) The department shall remove the name of a livestock producer from a livestock certification registry if the livestock producer has issued false records or statements or has made misleading claims to the department with regard to livestock certification when such records, statements, or claims cause, or could cause, the department to incorrectly include the name of a livestock producer in the certification registry.

(2) Before removal, the department shall notify the livestock producer in writing of the department's intention and the reasons for the intended removal from the registry. The notice shall inform the applicant of his or her right to request an administrative hearing before the director regarding his or her removal from the registry. A request for hearing shall be in writing and shall be filed with the department within thirty days after the service of the notice is made. If a request for hearing is filed within the thirty-day period, at least twenty days before the hearing the director shall notify the livestock producer



of the time, date, and place of the hearing. Such proceeding may be appealed as a contested case under the Administrative Procedure Act.

(3) A livestock producer whose name is removed from a livestock certification registry for the first time shall not be eligible to reapply for twelve months from the date of removal. A livestock producer whose name is removed from a registry a subsequent time shall not be eligible to reapply for thirty-six months from the date of removal.

**Source:** Laws 2001, LB 438, § 13.

Cross References

**Administrative Procedure Act**, see section 84-920.  
**Definitions**, where found, see section 54-2902.

**54-7,101 Livestock certification program; department; immunity.**

The department and its representatives shall not be held liable for unintentional loss or damage which occurs during certification testing, surveillance and monitoring, disease reporting, or disease research and laboratory testing, or because of certification or lack thereof in a voluntary livestock certification program.

**Source:** Laws 2001, LB 438, § 14.

Cross References

**Definitions**, where found, see section 54-2902.

**54-7,102 Livestock certification program; information; disclosure; when.**

Information collected or published by the department pursuant to sections 54-797 to 54-7,103 shall not disclose the identity of individual livestock producers, except for:

- (1) Information published in a livestock certification registry; and
- (2) Information collected for the purpose of a voluntary livestock certification program that may be disclosed by the State Veterinarian when, in his or her judgment, failure to disclose the name of a livestock producer or producers could result in the spread of a dangerous, contagious, infectious, or otherwise transmissible disease to and among livestock.

**Source:** Laws 2001, LB 438, § 15.

Cross References

**Definitions**, where found, see section 54-2902.

**54-7,103 Livestock certification program; department; powers.**

The department may establish procedures to implement sections 54-797 to 54-7,103.

**Source:** Laws 2001, LB 438, § 16.

Cross References

**Definitions**, where found, see section 54-2902.

(h) TRANSPORTATION

**54-7,104 Livestock; care.**

(1) Each express company engaged in the business of receiving and transporting freight in this state shall, when livestock is entrusted to its care for

shipment or transportation, exercise due care and diligence in protecting such livestock from all inclement weather during the period of such shipment. All such express companies shall provide for the proper housing of any livestock, whether crated or uncrated, entrusted to its care at any point where such express company receives freight to be shipped to other points or at any point where such express company receives freight transported from other points.

(2) Any violation of this section is a Class V misdemeanor.

**Source:** Laws 1915, c. 177, § 1, p. 361; C.S.1922, § 7138; C.S.1929, § 86-507; R.S.1943, § 86-502; R.S.1943, (1999), § 86-502; Laws 2002, LB 1105, § 441.

**Cross References**

Livestock transportation authority form, see section 54-1,115.

(i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

**54-7,105 Act, how cited; purpose.**

(1) Sections 54-7,105 to 54-7,109 shall be known and may be cited as the Exotic Animal Auction or Exchange Venue Act.

(2) The purpose of the Exotic Animal Auction or Exchange Venue Act is to require an exotic animal auction or exchange venue organizer to obtain a permit from the department before conducting an exotic animal auction or exchange venue and to maintain records for animal disease tracking purposes. Exotic animals sold at an exotic animal auction or exchange venue are often foreign to the United States or to the State of Nebraska. These exotic animals may carry dangerous, infectious, contagious, or otherwise transmissible diseases, including foreign animal diseases, which could pose a threat to Nebraska's livestock health and the livestock industry.

**Source:** Laws 2006, LB 856, § 6; Laws 2014, LB884, § 13; Laws 2020, LB344, § 69.

**Cross References**

**Violations,** prohibited acts, penalties, see sections 54-2953 to 54-2956.

**54-7,105.01 Terms, defined.**

For purposes of the Exotic Animal Auction or Exchange Venue Act:

(1) Accredited veterinarian has the same meaning as in section 54-2903;

(2) Animal has the same meaning as in section 54-2906;

(3) Animal welfare organization has the same meaning as in section 54-2503;

(4) Certificate of veterinary inspection means a legible document approved by the department, either paper copy or electronic, issued by an accredited veterinarian at the point of origin of an animal movement which records the (a) name and address of both consignor and consignee, (b) purpose of animal's movement, (c) destination in the state which includes the street address or enhanced-911 address of the premises, (d) age, breed, sex, and number of animals in the shipment, (e) description of the animals, (f) individual identification, when required, and (g) health examination date of the animals. The certificate of veterinary inspection is an acknowledgment by the accredited veterinarian of the apparent absence of any infectious, dangerous, contagious, or otherwise transmissible disease of any animal sold or offered for sale,

purchased, bartered, or other change of ownership at an exotic animal auction or exchange venue;

(5) Change of ownership means the transfer within the State of Nebraska of possession or control of an animal allowed to be transferred through consignment, sale, purchase, barter, lease, exchange, trade, gift, or any other transfer of possession or control at an exotic animal auction or exchange venue;

(6) Dangerous disease has the same meaning as in section 54-2911;

(7) Department means the Department of Agriculture of the State of Nebraska;

(8) Domesticated cervine animal has the same meaning as in section 54-2914;

(9) Exotic animal means any animal which is not commonly sold through licensed livestock auction markets pursuant to the Livestock Auction Market Act. Such animals shall include, but not be limited to, miniature cattle (bovine), miniature horses, miniature donkeys, sheep (ovine), goats (caprine), alpacas (camelid), llamas (camelid), pot-bellied pigs (porcine), and small mammals, with the exception of cats of the *Felis domesticus* species and dogs of the *Canis familiaris* species. The term also includes birds and poultry. The term does not include beef and dairy cattle, calves, swine, bison, or domesticated cervine animals;

(10) Exotic animal auction or exchange venue means any event or location, other than a livestock auction market as defined in section 54-1158 or events by an animal welfare organization or at an animal welfare organization location, where (a) an exotic animal is consigned, purchased, sold, traded, bartered, given away, or otherwise transferred, (b) an offer to purchase an exotic animal is made, (c) an exotic animal is offered to be consigned, sold, traded, bartered, given away, or otherwise transferred, or (d) any other event or location where there is a change of ownership of an exotic animal;

(11) Exotic animal auction or exchange venue organizer means a person in charge of organizing an exotic animal auction or exchange venue event, and may include any person who: (a) Arranges events for third parties to have private sales or trades of exotic animals; (b) organizes or coordinates exotic animal auctions or exchange venues; (c) leases out areas for exotic animal auctions or exchange venues; (d) provides or coordinates other similar arrangements involving exotic animals at retail establishments such as feed and supply stores, farm implement stores, and farm and ranch stores, which allow such sales in or on the premises; or (e) takes exotic animals for consignment on behalf of third parties;

(12) Officially identified means the application of an official identification device or method approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services; and

(13) Poultry has the same meaning as in section 54-2926.

**Source:** Laws 2014, LB884, § 14; Laws 2020, LB344, § 70.

Cross References

Livestock Auction Market Act, see section 54-1156.

**54-7,106 Permit; notification requirements; application; denial; grounds; prohibited acts.**

(1) Each exotic animal auction or exchange venue organizer shall apply for a permit and notify the department at least thirty days prior to the date on which the exotic animal auction or exchange venue is to be held. An applicant for a permit shall verify upon the application that the applicant has contracted the services of an accredited veterinarian to be present during the exotic animal auction or exchange venue as required under subsection (4) of section 54-7,108. Notification shall include the location, time, and dates of the exotic animal auction or exchange venue and the name and address of the exotic animal auction or exchange venue organizer. Notification shall be made in writing or by facsimile transmission. If a livestock auction market holds an exotic animal auction or exchange venue through its licensed livestock auction market, such livestock auction market shall comply with the Exotic Animal Auction or Exchange Venue Act for purposes of the exotic animal auction or exchange venue.

(2) The department may deny an application for a permit if the application does not satisfy the requirements of subsection (1) of this section, for previous acts or omissions of the applicant in noncompliance with the Exotic Animal Auction or Exchange Venue Act, or upon a determination that the applicant is unable to fulfill the duties and responsibilities of a permittee under the act.

(3) No person shall conduct an exotic animal auction or exchange venue without a permit issued pursuant to this section.

(4) No change of ownership of bovine, camelid, caprine, ovine, or porcine animals may occur at private treaty on the premises where the exotic animal auction or exchange venue is being held for the twenty-four-hour period prior to commencement of the exotic animal auction or exchange venue, nor for twenty-four hours following such event, unless such animals have a certificate of veterinary inspection at change of ownership.

**Source:** Laws 2006, LB 856, § 7; Laws 2014, LB884, § 15.

**Cross References**

**Violations,** prohibited acts, penalties, see sections 54-2953 to 54-2956.

**54-7,107 Records; contents; access by department.**

(1) An exotic animal auction or exchange venue organizer shall maintain records for each exotic animal auction or exchange venue such organizer arranges, organizes, leases areas for, consigns, or otherwise coordinates at least five years after the date of the exotic animal auction or exchange venue. The records shall include:

(a) The name, address, and telephone number of the exotic animal auction or exchange venue organizer;

(b) The name and address of all persons who purchased, sold, traded, bartered, gave away, or otherwise transferred an exotic animal at the exotic animal auction or exchange venue;

(c) The number of and species or type of each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or exchange venue;

(d) The date of purchase, sale, trade, barter, or other transfer of an exotic animal at the exotic animal auction or exchange venue; and

(e) When required by the Animal Health and Disease Control Act or the Exotic Animal Auction or Exchange Venue Act, a copy of the completed

certificate of veterinary inspection for each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or exchange venue.

(2) An exotic animal auction or exchange venue organizer shall, during all reasonable times, permit authorized employees and agents of the department to have access to and to copy any or all records relating to his or her exotic animal auction or exchange venue business.

(3) When necessary for the enforcement of the Exotic Animal Auction or Exchange Venue Act or any rules and regulations adopted and promulgated pursuant to such act, the authorized employees and agents of the department may access the records required by this section.

**Source:** Laws 2006, LB 856, § 8; Laws 2014, LB884, § 16; Laws 2020, LB344, § 71.

**Cross References**

**Animal Health and Disease Control Act**, see section 54-2901.

**Violations**, prohibited acts, penalties, see sections 54-2953 to 54-2956.

**54-7,108 Prohibited transfers; certificate of veterinary inspection; duties of exotic animal auction or exchange venue organizer; requirements for certain animals.**

(1) No beef or dairy cattle, calves, swine, bison, or domesticated cervine animals shall be, or offered to be, consigned, purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or exchange venue.

(2) An exotic animal auction or exchange venue organizer shall contact the department if a particular animal cannot be readily identified as an animal that is prohibited from being consigned, purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or exchange venue under this section.

(3) No bovine, camelid, caprine, ovine, or porcine animal shall be, or be offered to be, consigned, purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or exchange venue unless, prior to a change of ownership or other transfer of the animal, a completed certificate of veterinary inspection for such animal is presented to the exotic animal auction or exchange venue organizer. Such certificate of veterinary inspection shall be signed by an accredited veterinarian on the date of or no more than thirty days prior to the date the exotic animal auction or exchange venue is held.

(4) An exotic animal auction or exchange venue organizer shall contract with an accredited veterinarian to be present during the exotic animal auction or exchange venue for visually inspecting such exotic animals and to issue necessary certificates of veterinary inspection for change of ownership when required by the Animal Health and Disease Control Act or the Exotic Animal Auction or Exchange Venue Act.

(5) All dairy goats imported into Nebraska shall have an official tuberculin test prior to import into Nebraska. All sheep and goats shall have official identification as required under the Animal Health and Disease Control Act.

(6) A copy of the certificate of veterinary inspection shall be submitted to the department by the exotic animal auction or exchange venue organizer within

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seven days from the date the exotic animal auction or exchange venue was held.

(7) Any bovine, camelid, caprine, ovine, or porcine animal which is not prohibited from transfer at an exotic animal auction or exchange venue shall be officially identified prior to change of ownership.

**Source:** Laws 2006, LB 856, § 9; Laws 2014, LB884, § 17; Laws 2020, LB344, § 72.

Cross References

**Animal Health and Disease Control Act**, see section 54-2901.  
**Violations**, prohibited acts, penalties, see sections 54-2953 to 54-2956.

**54-7,109 Compliance with game laws required.**

Compliance with the Exotic Animal Auction or Exchange Venue Act does not relieve a person of the requirement to comply with the provisions of sections 37-477 to 37-479.

**Source:** Laws 2006, LB 856, § 10; R.S.1943, (2010), § 54-753.06; Laws 2014, LB884, § 18.

**54-7,110 Repealed. Laws 2020, LB344, § 82.**

ARTICLE 8

COMMERCIAL FEED

Cross References

**License Suspension Act**, see section 43-3301.

Section	
54-801.	Repealed. Laws 1951, c. 176, § 15.
54-802.	Repealed. Laws 1951, c. 176, § 15.
54-803.	Repealed. Laws 1951, c. 176, § 15.
54-804.	Repealed. Laws 1951, c. 176, § 15.
54-805.	Repealed. Laws 1951, c. 176, § 15.
54-806.	Repealed. Laws 1951, c. 176, § 15.
54-807.	Repealed. Laws 1951, c. 176, § 15.
54-808.	Repealed. Laws 1951, c. 176, § 15.
54-809.	Repealed. Laws 1951, c. 176, § 15.
54-810.	Repealed. Laws 1951, c. 176, § 15.
54-811.	Repealed. Laws 1951, c. 176, § 15.
54-812.	Repealed. Laws 1951, c. 176, § 15.
54-813.	Repealed. Laws 1951, c. 176, § 15.
54-814.	Repealed. Laws 1951, c. 176, § 15.
54-815.	Repealed. Laws 1951, c. 176, § 15.
54-816.	Repealed. Laws 1951, c. 176, § 15.
54-817.	Repealed. Laws 1951, c. 176, § 15.
54-818.	Repealed. Laws 1951, c. 176, § 15.
54-819.	Repealed. Laws 1986, LB 322, § 20.
54-820.	Repealed. Laws 1986, LB 322, § 20.
54-820.01.	Repealed. Laws 1986, LB 322, § 20.
54-821.	Repealed. Laws 1986, LB 322, § 20.
54-822.	Repealed. Laws 1986, LB 322, § 20.
54-823.	Repealed. Laws 1986, LB 322, § 20.
54-824.	Repealed. Laws 1986, LB 322, § 20.
54-825.	Repealed. Laws 1986, LB 322, § 20.
54-826.	Repealed. Laws 1986, LB 322, § 20.
54-826.01.	Repealed. Laws 1986, LB 322, § 20.
54-827.	Repealed. Laws 1986, LB 322, § 20.

- Section
- 54-828. Repealed. Laws 1986, LB 322, § 20.
  - 54-829. Repealed. Laws 1975, LB 318, § 12.
  - 54-830. Repealed. Laws 1986, LB 322, § 20.
  - 54-831. Repealed. Laws 1986, LB 322, § 20.
  - 54-832. Repealed. Laws 1986, LB 322, § 20.
  - 54-833. Repealed. Laws 1986, LB 322, § 20.
  - 54-834. Repealed. Laws 1986, LB 322, § 20.
  - 54-835. Repealed. Laws 1986, LB 322, § 20.
  - 54-836. Repealed. Laws 1986, LB 322, § 20.
  - 54-837. Repealed. Laws 1986, LB 322, § 20.
  - 54-838. Repealed. Laws 1986, LB 322, § 20.
  - 54-839. Repealed. Laws 1986, LB 322, § 20.
  - 54-840. Repealed. Laws 1986, LB 322, § 20.
  - 54-841. Repealed. Laws 1986, LB 322, § 20.
  - 54-842. Repealed. Laws 1986, LB 322, § 20.
  - 54-843. Repealed. Laws 1986, LB 322, § 20.
  - 54-844. Repealed. Laws 1981, LB 545, § 52.
  - 54-845. Repealed. Laws 1986, LB 322, § 20.
  - 54-846. Repealed. Laws 1986, LB 322, § 20.
  - 54-847. Act, how cited.
  - 54-848. Act; administration.
  - 54-849. Terms, defined.
  - 54-850. Manufacturer or distributor; license required; application; fee; posting; exception; cancellation.
  - 54-851. Repealed. Laws 1992, LB 366, § 70.
  - 54-852. Commercial feed; label requirements; customer-formula feed; requirements.
  - 54-853. Misbranded commercial feed, defined.
  - 54-854. Adulterated commercial feed, defined.
  - 54-855. Prohibited acts.
  - 54-856. Inspection fees; administrative fee; statement and records required.
  - 54-857. Commercial Feed Administration Cash Fund; created; use; investment.
  - 54-858. Director; adopt rules and regulations; notice to current licensees.
  - 54-859. Enforcement of act; inspections; testing; methods of analysis; results; distribution.
  - 54-860. Violations; order of director or court; seizure of feed.
  - 54-861. Violations; penalty; county attorney; duties; injunction; appeal; trade secret disclosure; penalty.
  - 54-862. Director; cooperate with other entities.
  - 54-863. Annual report; contents.

**54-801 Repealed. Laws 1951, c. 176, § 15.**

**54-802 Repealed. Laws 1951, c. 176, § 15.**

**54-803 Repealed. Laws 1951, c. 176, § 15.**

**54-804 Repealed. Laws 1951, c. 176, § 15.**

**54-805 Repealed. Laws 1951, c. 176, § 15.**

**54-806 Repealed. Laws 1951, c. 176, § 15.**

**54-807 Repealed. Laws 1951, c. 176, § 15.**

**54-808 Repealed. Laws 1951, c. 176, § 15.**

**54-809 Repealed. Laws 1951, c. 176, § 15.**

**54-810 Repealed. Laws 1951, c. 176, § 15.**

**54-811 Repealed. Laws 1951, c. 176, § 15.**

- 54-812 Repealed. Laws 1951, c. 176, § 15.
- 54-813 Repealed. Laws 1951, c. 176, § 15.
- 54-814 Repealed. Laws 1951, c. 176, § 15.
- 54-815 Repealed. Laws 1951, c. 176, § 15.
- 54-816 Repealed. Laws 1951, c. 176, § 15.
- 54-817 Repealed. Laws 1951, c. 176, § 15.
- 54-818 Repealed. Laws 1951, c. 176, § 15.
- 54-819 Repealed. Laws 1986, LB 322, § 20.
- 54-820 Repealed. Laws 1986, LB 322, § 20.
- 54-820.01 Repealed. Laws 1986, LB 322, § 20.
- 54-821 Repealed. Laws 1986, LB 322, § 20.
- 54-822 Repealed. Laws 1986, LB 322, § 20.
- 54-823 Repealed. Laws 1986, LB 322, § 20.
- 54-824 Repealed. Laws 1986, LB 322, § 20.
- 54-825 Repealed. Laws 1986, LB 322, § 20.
- 54-826 Repealed. Laws 1986, LB 322, § 20.
- 54-826.01 Repealed. Laws 1986, LB 322, § 20.
- 54-827 Repealed. Laws 1986, LB 322, § 20.
- 54-828 Repealed. Laws 1986, LB 322, § 20.
- 54-829 Repealed. Laws 1975, LB 318, § 12.
- 54-830 Repealed. Laws 1986, LB 322, § 20.
- 54-831 Repealed. Laws 1986, LB 322, § 20.
- 54-832 Repealed. Laws 1986, LB 322, § 20.
- 54-833 Repealed. Laws 1986, LB 322, § 20.
- 54-834 Repealed. Laws 1986, LB 322, § 20.
- 54-835 Repealed. Laws 1986, LB 322, § 20.
- 54-836 Repealed. Laws 1986, LB 322, § 20.
- 54-837 Repealed. Laws 1986, LB 322, § 20.
- 54-838 Repealed. Laws 1986, LB 322, § 20.
- 54-839 Repealed. Laws 1986, LB 322, § 20.
- 54-840 Repealed. Laws 1986, LB 322, § 20.



**54-841 Repealed. Laws 1986, LB 322, § 20.**

**54-842 Repealed. Laws 1986, LB 322, § 20.**

**54-843 Repealed. Laws 1986, LB 322, § 20.**

**54-844 Repealed. Laws 1981, LB 545, § 52.**

**54-845 Repealed. Laws 1986, LB 322, § 20.**

**54-846 Repealed. Laws 1986, LB 322, § 20.**

**54-847 Act, how cited.**

Sections 54-847 to 54-863 shall be known and may be cited as the Commercial Feed Act.

**Source:** Laws 1986, LB 322, § 1.

**54-848 Act; administration.**

The Commercial Feed Act shall be administered by the Department of Agriculture.

**Source:** Laws 1986, LB 322, § 2.

**54-849 Terms, defined.**

For purposes of the Commercial Feed Act, unless the context otherwise requires:

(1) Brand name shall mean any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or person named on the label and distinguishing it from that of others;

(2) Commercial feed shall mean all materials or combinations of materials which are distributed or intended for distribution for use as feed or for mixing in feed unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated within the meaning of subdivision (1) of section 54-854, are exempt. The director may, by regulation, exempt from this definition or from specific provisions of the Commercial Feed Act commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of subdivision (1) of section 54-854;

(3) Customer-formula feed shall mean commercial feed which consists of a mixture of commercial feeds or feed ingredients manufactured according to the specific instructions of the final purchaser;

(4) Department shall mean the Department of Agriculture;

(5) Director shall mean the Director of Agriculture or his or her authorized agent;

(6) Distribute shall mean to offer for sale, sell, exchange, barter, or otherwise supply commercial feed;

(7) Distributor shall mean any person who distributes;

(8) Drug shall mean any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than humans

and articles other than feed intended to affect the structure or any function of the animal body;

(9) Feed ingredient shall mean each of the constituent materials making up a commercial feed;

(10) Label shall mean a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed;

(11) Labeling shall mean all labels and other written, printed, or graphic matter (a) upon a commercial feed or any of its containers or wrappers or (b) accompanying such commercial feed;

(12) Manufacture shall mean to grind, mix, blend, or further process a commercial feed for distribution;

(13) Mineral feed shall mean a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

(14) Official sample shall mean a sample of feed taken by the director in accordance with section 54-859;

(15) Percent or percentages shall mean percentages by weight;

(16) Person shall mean any individual, partnership, limited liability company, cooperative, corporation, firm, trustee, or association;

(17) Pet shall mean any domesticated animal normally maintained in or near the household of the owner thereof;

(18) Pet food shall mean any commercial feed prepared and distributed for consumption by pets;

(19) Product name shall mean the name of the commercial feed which identifies it as to kind, class, or specific use;

(20) Specialty pet shall mean any domesticated animal pet normally maintained in a cage or tank including, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles;

(21) Specialty pet food shall mean any commercial feed prepared and distributed for consumption by specialty pets; and

(22) Ton shall mean a net weight of two thousand pounds avoirdupois.

**Source:** Laws 1986, LB 322, § 3; Laws 1992, LB 366, § 14; Laws 1993, LB 121, § 339.

**54-850 Manufacturer or distributor; license required; application; fee; posting; exception; cancellation.**

(1) No person shall manufacture or distribute commercial feed in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial feed in the State of Nebraska.

(2) Application for a license shall be made to the department on forms prescribed and furnished by the department. The application shall be accompanied by an annual license fee of fifteen dollars. Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) This section shall not apply to any person who distributes less than a five-ton volume of commercial feed annually.

(5) The director may refuse to issue a license for any commercial feed facility not in compliance with the Commercial Feed Act and may cancel any license subsequently found not in compliance with such act. No license shall be refused or canceled unless the applicant has been given an opportunity to be heard before the director.

**Source:** Laws 1986, LB 322, § 4; Laws 1997, LB 752, § 133; Laws 2016, LB909, § 4.

**54-851 Repealed. Laws 1992, LB 366, § 70.**

**54-852 Commercial feed; label requirements; customer-formula feed; requirements.**

A commercial feed shall be labeled as follows:

(1) In the case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following:

(a) The net weight;

(b) The product name and the brand name, if any, under which the commercial feed is distributed;

(c) The guaranteed analysis stated in such terms as the director, by regulation, determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases, the substances or elements guaranteed shall be determinable by laboratory methods such as the methods published by the AOAC International or other generally recognized methods;

(d) The common or usual name of each feed ingredient used in the manufacture of the commercial feed, except that the director, by regulation, may permit the use of a collective term of a group of feed ingredients which perform a similar function or he or she may exempt such commercial feeds, or any group thereof, from this requirement of a feed ingredient statement if he or she finds that such statement is not required in the interest of consumers;

(e) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the director, by regulation, may deem necessary for their safe and effective use; and

(g) Such precautionary statements as the director, by regulation, determines are necessary for the safe and effective use of the commercial feed; and

(2) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip, or other shipping document bearing the following information:

(a) Name and address of the manufacturer;

(b) Name and address of the purchaser;

(c) Date of manufacture;

(d) The product name and net weight of each commercial feed and each other feed ingredient used in the mixture;

- (e) Adequate directions for use for all customer-formula feeds;
- (f) The directions for use and precautionary statements as required by rules and regulations adopted and promulgated by the director; and
- (g) If a drug-containing product is used:
  - (i) The purpose of the medication or a claim statement;
  - (ii) The established name and level of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules and regulations adopted and promulgated by the director; and
  - (iii) All appropriate precautions, warnings, and withdrawal statements as required by the director.

A duplicate copy of all the information required in subdivision (2) of this section shall be kept by the manufacturer for use by the department for sampling and inspection purposes.

**Source:** Laws 1986, LB 322, § 6; Laws 1992, LB 366, § 15.

**54-853 Misbranded commercial feed, defined.**

A commercial feed shall be deemed to be misbranded if:

- (1) Its labeling is false or misleading in any particular;
- (2) It is distributed under the name of another commercial feed;
- (3) It is not labeled as required in section 54-852;
- (4) It purports to be or is represented as a commercial feed, or it purports to contain or is represented as containing a feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the director; or
- (5) Any word, statement, or other information required by or under authority of the Commercial Feed Act to appear on the label is not prominently placed thereon with such conspicuousness 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.

**Source:** Laws 1986, LB 322, § 7.

**54-854 Adulterated commercial feed, defined.**

A commercial feed shall be deemed to be adulterated if:

- (1)(a) It bears or contains any poisonous or deleterious substance which may render it injurious to health, except that if the substance is not an added substance, such commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;
- (b) It bears or contains any added poisonous, deleterious, or nonnutritive substance which is unsafe within the meaning of section 406, as amended, of the Federal Food, Drug, and Cosmetic Act, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity or (ii) a food additive;
- (c) It is or it bears or contains any food additive which is unsafe within the meaning of section 409, as amended, of the Federal Food, Drug, and Cosmetic Act;
- (d) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a), as amended, of

the Federal Food, Drug, and Cosmetic Act, except that when a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408, as amended, of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of such proposed feed will result or is likely to result in a pesticide residue in the edible product of the animal which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act; or

(e) It is or it bears or contains any color additive which is unsafe within the meaning of section 706, as amended, of the Federal Food, Drug, and Cosmetic Act;

(2) Any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(3) Its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules and regulations adopted and promulgated by the director to assure that the drug meets the requirements of the Commercial Feed Act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In adopting and promulgating such rules and regulations, the director shall adopt and promulgate the current federal Good Manufacturing Practice Regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act unless he or she determines that they are not appropriate to the conditions which exist in this state;

(5) It contains primary noxious weed seeds as defined in section 81-2,147.01;

(6) It contains prohibited noxious weed seeds as defined in section 81-2,147.01 in amounts exceeding the limits which the director shall establish by rule or regulation; or

(7) It has been manufactured, ground, mixed, bagged, or held under unsanitary conditions whereby it may have become contaminated with filth or been rendered injurious to animal health. An animal feed may be deemed to be contaminated with filth if not protected by all reasonable means and as far as necessary from dust, dirt, insect, or bird, rodent, or other animal excretion, and other foreign or injurious contamination.

**Source:** Laws 1986, LB 322, § 8; Laws 1992, LB 366, § 16; Laws 1997, LB 263, § 1.

#### **54-855 Prohibited acts.**

The following acts are prohibited:

- (1) The manufacture or distribution of any commercial feed that is adulterated or misbranded;
- (2) The adulteration or misbranding of any commercial feed;
- (3) The distribution of agricultural commodities, such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of subdivision (1) of section 54-854;
- (4) The removal or disposal of any commercial feed in violation of an order under section 54-860;
- (5) The failure or refusal to comply with section 54-850;
- (6) The violation of subsection (6) of section 54-861; and
- (7) Failure to pay inspection fees and file reports as required by section 54-856.

**Source:** Laws 1986, LB 322, § 9; Laws 1992, LB 366, § 17.

**54-856 Inspection fees; administrative fee; statement and records required.**

(1) There shall be paid to the director an inspection fee of ten cents per ton on all commercial feed distributed in the State of Nebraska during the six-month period following January 1, 1987. After the first six months of operation, the fee may be raised or lowered by the director after a public hearing is held outlining the reason for any proposed change in the rate. The maximum rate fixed by the director shall not exceed fifteen cents per ton. The inspection fee shall be paid on commercial feed distributed by the person whose name appears on the label as the manufacturer, guarantor, or distributor, except that a person other than the manufacturer, guarantor, or distributor may assume liability for the inspection fee, subject to the following:

(a) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor;

(b) No fee shall be paid on customer-formula feed if the inspection fee is paid on the commercial feed which is used as ingredients therein;

(c) No fee shall be paid on commercial feed used as ingredients for the manufacture of other commercial feed. If the fee has already been paid, credit shall be given for such payment;

(d) In the case of a commercial feed which is distributed in the state only in packages of ten pounds or less, an annual fee fixed by the director, not to exceed twenty-five dollars, shall be paid in lieu of the inspection fee. The annual fee shall be paid not later than the last day of January each year; and

(e) The minimum inspection fee shall be five dollars for any six-month reporting period.

(2) If the director determines that it is necessary to adjust the rate of the inspection fee being paid to the department, all persons holding a valid license issued pursuant to section 54-850 shall be so notified and shall be given an opportunity to offer comment at a public hearing which shall be required prior to any inspection fee rate change.

(3) Each person who is liable for the payment of such fee shall:

(a) File, not later than January 31 and July 31 of each year, a semiannual statement setting forth the number of tons of commercial feed distributed in this state during the preceding six-month period, which statement shall cover

the periods from July 1 to December 31 and January 1 to June 30, and upon filing such statement, pay the inspection fee at the rate specified by this section. Any person who holds a valid license issued pursuant to section 54-850 and whose name appears on the label as the manufacturer, guarantor, or distributor shall file such statement regardless of whether any inspection fee is due. Inspection fees which are due and owing and have not been remitted to the director within fifteen days following the date due shall have an administrative fee of twenty-five percent of the fees due added to the amount due when payment is made, and an additional administrative fee of twenty-five percent of the fees due shall be added if such inspection and administrative fees are not paid within thirty days of the due date. The purpose of the additional administrative fees is to cover the administrative costs associated with collecting fees. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Commercial Feed Administration Cash Fund. The assessment of this administrative fee shall not prevent the director from taking other actions as provided in the Commercial Feed Act; and

(b) Keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed distributed in this state. The director shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement, to pay the inspection fee, or to comply as provided in this section shall constitute sufficient cause for the cancellation of all licenses on file.

**Source:** Laws 1986, LB 322, § 10; Laws 1992, LB 366, § 18; Laws 2016, LB909, § 5.

**54-857 Commercial Feed Administration Cash Fund; created; use; investment.**

All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer for credit to the Commercial Feed Administration Cash Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act and to aid in defraying the expenses related to a cooperative agreement with the United States Department of Agriculture Market News reporting program. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Commercial Feed Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1986, LB 322, § 11; Laws 1995, LB 7, § 57; Laws 2008, LB961, § 3; Laws 2009, First Spec. Sess., LB3, § 29; Laws 2011, LB305, § 1; Laws 2012, LB782, § 83; Laws 2014, LB941, § 2; Laws 2017, LB2, § 1.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**54-858 Director; adopt rules and regulations; notice to current licensees.**

(1) The director shall adopt and promulgate such rules and regulations for commercial feed and pet food as are specifically authorized in the Commercial Feed Act and such other reasonable rules and regulations as may be necessary

for the efficient enforcement of the act. In the interest of uniformity, the director shall adopt and promulgate as rules and regulations, unless he or she determines that they are inconsistent with the act or are not appropriate to conditions which exist in this state, the following:

(a) The Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization; and

(b) Any regulation relating to commercial feed adopted and promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act.

(2) The Administrative Procedure Act shall apply to the Commercial Feed Act, except that it shall be the duty of the department to provide adequate notice to all persons holding a valid license issued pursuant to section 54-850 of any proposed rule or regulation, amendment to a rule or regulation, or intent to repeal an existing rule or regulation.

**Source:** Laws 1986, LB 322, § 12; Laws 1992, LB 366, § 19.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **54-859 Enforcement of act; inspections; testing; methods of analysis; results; distribution.**

(1) To enforce the Commercial Feed Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial feed is manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution of commercial feed, production and control procedures to determine compliance with the federal Good Manufacturing Practice Regulations, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial feed. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial feed is in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.



(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The results of all analyses of official samples shall be forwarded by the director to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within ninety days of the analysis, the director shall furnish to the person named on the label a portion of the sample concerned. Following expiration of the ninety-day period, the director may dispose of such sample.

(4) The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample obtained and analyzed pursuant to this section.

**Source:** Laws 1986, LB 322, § 13; Laws 1992, LB 366, § 20; Laws 1993, LB 267, § 16.

**54-860 Violations; order of director or court; seizure of feed.**

(1) When the director has reasonable cause to believe any lot of commercial feed is being distributed in violation of the Commercial Feed Act or any rule or regulation adopted and promulgated pursuant thereto, he or she may issue and enforce a written or printed withdrawal-from-distribution order warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the director or a court of competent jurisdiction. The director shall release the lot of commercial feed so withdrawn when the provisions, rules, and regulations of the act have been complied with. If compliance is not obtained within thirty days, the director may begin, or upon request of the distributor or the person named on the label shall begin, proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with the Commercial Feed Act and the rules and regulations adopted and promulgated pursuant thereto shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which such commercial feed is located. If the court finds the commercial feed to be in violation of the act or such rules and regulations and orders the condemnation of the commercial feed, such feed shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. In no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with the act.

**Source:** Laws 1986, LB 322, § 14; Laws 1992, LB 366, § 21.

**54-861 Violations; penalty; county attorney; duties; injunction; appeal; trade secret disclosure; penalty.**

(1) Except as otherwise provided in subsection (6) of this section, any person convicted of violating any of the provisions of the Commercial Feed Act or any rules and regulations adopted and promulgated pursuant thereto or who shall impede, hinder, or otherwise prevent or attempt to prevent the director in the performance of his or her duty shall be guilty of a Class IV misdemeanor for the

first violation and guilty of a Class II misdemeanor for any subsequent violation.

(2) Nothing in the Commercial Feed Act shall be construed as requiring the director to (a) report for prosecution, (b) institute seizure proceedings, or (c) issue a withdrawal-from-distribution order, as a result of minor violations of the act or when he or she believes the public interest will best be served by suitable notice of warning in writing.

(3) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (4) of this section without delay. Before the director reports a violation, an opportunity shall be given the manufacturer or distributor to present his or her view to the director.

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

(5) Any person adversely affected by an act, order, or ruling made by the department pursuant to the Commercial Feed Act may appeal the act, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Any person who uses to his or her own advantage or reveals to other than the director, representatives of the department, the Attorney General, other legal representatives of the state, or the courts when relevant in any judicial proceeding any information acquired under the authority of the Commercial Feed Act concerning any method, record, formulation, or process which as a trade secret is entitled to protection shall be guilty of a Class IV misdemeanor. The director shall not be prohibited from exchanging information of a regulatory nature with duly appointed officials of the federal government or other states who are similarly prohibited by law from revealing this information.

**Source:** Laws 1986, LB 322, § 15; Laws 1988, LB 352, § 94.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **54-862 Director; cooperate with other entities.**

The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose of the Commercial Feed Act.

**Source:** Laws 1986, LB 322, § 16.

#### **54-863 Annual report; contents.**

The director shall publish at least annually, in such form as he or she may deem proper, information concerning the sales of commercial feed together with such data on their production and use as he or she may consider advisable

and a report of the results of the analyses of official samples of commercial feed sold within the state as compared with the analyses guaranteed on the label, except that the information concerning production and use of commercial feed shall not disclose the operations of any person.

**Source:** Laws 1986, LB 322, § 17; Laws 1992, LB 366, § 22.

## ARTICLE 9

### LIVESTOCK ANIMAL WELFARE ACT

#### Section

- 54-901. Act, how cited.
- 54-902. Terms, defined.
- 54-903. Abandonment or cruel neglect; mistreatment; prohibited acts; violation; penalty.
- 54-904. Indecency with a livestock animal; penalty.
- 54-905. Court order for reimbursement of expenses; liability for expenses; 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.
- 54-907. Act; applicability.
- 54-908. Employee of governmental livestock animal control or animal abuse agency; duty to report suspected criminal activity; immunity from liability; contents of report; form; failure to report; penalty.
- 54-909. Conviction; court order not to own or possess livestock animal; violation; penalty; seizure of livestock animal.
- 54-910. Livestock animal health care professional; duty to report suspected criminal activity; immunity from liability.
- 54-911. Prohibited acts relating to equine; violation; penalty.
- 54-912. Prohibited acts relating to bovine; violation; penalty.
- 54-913. 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.

#### **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.

**54-903 Abandonment or cruel neglect; mistreatment; prohibited acts; violation; penalty.**

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects a livestock animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the livestock animal, in which case it is a Class IV felony.

(2) A person who cruelly mistreats a livestock animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

**Source:** Laws 2010, LB865, § 3.

**54-904 Indecency with a livestock animal; penalty.**

A person commits indecency with a livestock animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with a livestock animal is a Class III misdemeanor.

**Source:** Laws 2010, LB865, § 4.

**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.

**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.

**54-907 Act; applicability.**

The Livestock Animal Welfare Act shall not apply to:

- (1) Care or treatment of a livestock animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his or her employment, that occurs while acting in his or her professional capacity, or that conforms to commonly accepted veterinary practices;
- (2) Euthanasia of a livestock animal or livestock animals as conducted by the owner or by his or her agent or a veterinarian upon the owner's request;
- (3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;
- (4) Commonly accepted animal welfare practices with respect to livestock animals and commercial livestock operations, including their transport from one location to another and nonnegligent actions taken by personnel or agents of the Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;
- (5) Commonly followed practices occurring in conjunction with the slaughter of animals for food or byproducts;
- (6) Commonly accepted animal training practices; and
- (7) Commonly accepted practices occurring in conjunction with sanctioned rodeos, animal racing, and pulling contests.

**Source:** Laws 2010, LB865, § 7.

**Cross References**

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

**54-908 Employee of governmental livestock animal control or animal abuse agency; duty to report suspected criminal activity; immunity from liability; contents of report; form; failure to report; penalty.**

- (1) For purposes of this section:
  - (a) Employee means any employee of a governmental agency dealing with livestock animal control or animal abuse; and
  - (b) Reasonably suspects means a basis for reporting knowledge or a set of facts that would lead a person of ordinary care and prudence to believe and conscientiously entertain a strong suspicion that criminal activity is at hand or that a crime has been committed.
- (2) Any employee, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the employee to reasonably suspect that a livestock animal has been abandoned, cruelly neglected, or cruelly mistreated shall report such to the entity or entities that investigate such reports in that jurisdiction.
- (3) The report of an employee shall be made within two working days of acquiring the information concerning the livestock animal by facsimile transmission of a written report presented in the form described in subsection (5) of this section or by telephone. When an immediate response is necessary to protect the health and safety of the livestock animal or others, the report of an employee shall be made by telephone as soon as possible.

(4) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected livestock animal abandonment, cruel neglect, or cruel mistreatment. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(5) A report made by an employee pursuant to this section shall include:

(a) The reporter's name and title, business address, and telephone number;

(b) The name, if known, of the livestock animal owner or custodian, whether a business or individual;

(c) A description of the livestock animal or livestock animals involved, person or persons involved, and location of the livestock animal or livestock animals and the premises; and

(d) The date, the time, and a description of the observation or incident which led the reporter to reasonably suspect livestock animal abandonment, cruel neglect, or cruel mistreatment and any other information the reporter believes may be relevant.

(6) A report made by an employee pursuant to this section may be made on preprinted forms prepared by the entity or entities that investigate reports of livestock animal abandonment, livestock animal cruel neglect, or livestock animal cruel mistreatment in that jurisdiction. The form shall include space for the information required under subsection (5) of this section.

(7) When two or more employees jointly have observed or reasonably suspected livestock animal abandonment, livestock animal cruel neglect, or livestock animal cruel mistreatment and there is agreement between or among them, a report may be made by one person by mutual agreement. Any such reporter who has knowledge that the person designated to report has failed to do so shall thereafter make the report.

(8) Any employee failing to report under this section shall be guilty of an infraction.

**Source:** Laws 2010, LB865, § 8.

**54-909 Conviction; court order not to own or possess livestock animal; violation; penalty; seizure of livestock animal.**

(1) If a person is convicted of a Class IV felony under section 54-903, the sentencing court shall order such person not to own or possess a livestock animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(2) If a person is convicted of a Class I misdemeanor under section 54-903 or a Class III misdemeanor under section 54-904, the sentencing court may order such person not to own or possess any livestock animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(3) Any livestock animal involved in a violation of a court order under subsection (1) or (2) of this section shall be subject to seizure by law enforcement.

**Source:** Laws 2010, LB865, § 9.

**54-910 Livestock animal health care professional; duty to report suspected criminal activity; immunity from liability.**

(1) Any livestock animal health care professional, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the livestock animal health care professional to reasonably suspect that a livestock animal has been abandoned, cruelly neglected, or cruelly mistreated shall report such treatment to an entity that investigates such reports in the appropriate jurisdiction.

(2) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected abandonment, cruel neglect, or cruel mistreatment of a livestock animal. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(3) For purposes of this section, a livestock animal health care professional means a licensed veterinarian as defined in section 38-3310 or a licensed veterinary technician as defined in section 38-3311 whose practice involves care of livestock animals.

**Source:** Laws 2010, LB865, § 10.

**54-911 Prohibited acts relating to equine; violation; penalty.**

(1) No person shall intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping or causing to fall, or lassoing or roping the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

**Source:** Laws 2010, LB865, § 11.

**54-912 Prohibited acts relating to bovine; violation; penalty.**

(1) No person shall intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping, causing to fall, or dragging of any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

**Source:** Laws 2010, LB865, § 12.

**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.

**ARTICLE 10**

**REGISTRATION OF STALLIONS AND JACKS**

Section

- 54-1001. Repealed. Laws 1980, LB 631, § 6.
- 54-1002. Repealed. Laws 1980, LB 631, § 6.
- 54-1003. Repealed. Laws 1980, LB 631, § 6.
- 54-1004. Repealed. Laws 1980, LB 631, § 6.
- 54-1005. Repealed. Laws 1980, LB 631, § 6.
- 54-1006. Repealed. Laws 1980, LB 631, § 6.
- 54-1007. Repealed. Laws 1980, LB 631, § 6.
- 54-1008. Repealed. Laws 1980, LB 631, § 6.
- 54-1009. Repealed. Laws 1980, LB 631, § 6.
- 54-1010. Repealed. Laws 1980, LB 631, § 6.
- 54-1011. Repealed. Laws 1980, LB 631, § 6.

**54-1001 Repealed. Laws 1980, LB 631, § 6.**

**54-1002 Repealed. Laws 1980, LB 631, § 6.**

**54-1003 Repealed. Laws 1980, LB 631, § 6.**

**54-1004 Repealed. Laws 1980, LB 631, § 6.**

**54-1005 Repealed. Laws 1980, LB 631, § 6.**

**54-1006 Repealed. Laws 1980, LB 631, § 6.**

**54-1007 Repealed. Laws 1980, LB 631, § 6.**

**54-1008 Repealed. Laws 1980, LB 631, § 6.**

**54-1009 Repealed. Laws 1980, LB 631, § 6.**

**54-1010 Repealed. Laws 1980, LB 631, § 6.**

**54-1011 Repealed. Laws 1980, LB 631, § 6.**

**ARTICLE 11**  
**LIVESTOCK AUCTION MARKET ACT**

Cross References

**Agricultural Suppliers Lease Protection Act**, see section 2-5501.  
**License Suspension Act**, see section 43-3301.

Section	
54-1101.	Repealed. Laws 1961, c. 271, § 33.
54-1102.	Repealed. Laws 1961, c. 271, § 33.
54-1103.	Repealed. Laws 1961, c. 271, § 33.
54-1104.	Repealed. Laws 1961, c. 271, § 33.
54-1105.	Repealed. Laws 1961, c. 271, § 33.
54-1106.	Repealed. Laws 1961, c. 271, § 33.
54-1107.	Repealed. Laws 1961, c. 271, § 33.
54-1108.	Repealed. Laws 1961, c. 271, § 33.
54-1109.	Repealed. Laws 1961, c. 271, § 33.
54-1110.	Repealed. Laws 1961, c. 271, § 33.
54-1111.	Repealed. Laws 1961, c. 271, § 33.
54-1112.	Repealed. Laws 1961, c. 271, § 33.
54-1113.	Repealed. Laws 1961, c. 271, § 33.
54-1114.	Repealed. Laws 1961, c. 271, § 33.
54-1115.	Repealed. Laws 1961, c. 271, § 33.
54-1116.	Repealed. Laws 1961, c. 271, § 33.
54-1117.	Repealed. Laws 1961, c. 271, § 33.
54-1118.	Repealed. Laws 1961, c. 271, § 33.
54-1119.	Repealed. Laws 1961, c. 271, § 33.
54-1120.	Repealed. Laws 1961, c. 271, § 33.
54-1121.	Repealed. Laws 1961, c. 271, § 33.
54-1122.	Repealed. Laws 1961, c. 271, § 33.
54-1122.01.	Repealed. Laws 1961, c. 271, § 33.
54-1123.	Repealed. Laws 1961, c. 271, § 33.
54-1124.	Repealed. Laws 1961, c. 271, § 33.
54-1124.01.	Repealed. Laws 1961, c. 271, § 33.
54-1125.	Repealed. Laws 1961, c. 271, § 33.
54-1126.	Repealed. Laws 1961, c. 271, § 33.
54-1127.	Repealed. Laws 1963, c. 319, § 34.
54-1128.	Repealed. Laws 1963, c. 319, § 34.
54-1129.	Repealed. Laws 1963, c. 319, § 34.
54-1130.	Repealed. Laws 1963, c. 319, § 34.
54-1131.	Repealed. Laws 1963, c. 319, § 34.
54-1132.	Repealed. Laws 1963, c. 319, § 34.
54-1133.	Repealed. Laws 1963, c. 319, § 34.
54-1134.	Repealed. Laws 1963, c. 319, § 34.
54-1135.	Repealed. Laws 1963, c. 319, § 34.
54-1136.	Repealed. Laws 1963, c. 319, § 34.
54-1137.	Repealed. Laws 1963, c. 319, § 34.
54-1138.	Repealed. Laws 1963, c. 319, § 34.
54-1139.	Repealed. Laws 1963, c. 319, § 34.
54-1140.	Repealed. Laws 1963, c. 319, § 34.
54-1141.	Repealed. Laws 1963, c. 319, § 34.
54-1142.	Repealed. Laws 1963, c. 319, § 34.
54-1143.	Repealed. Laws 1963, c. 319, § 34.
54-1144.	Repealed. Laws 1963, c. 319, § 34.
54-1145.	Repealed. Laws 1963, c. 319, § 34.
54-1146.	Repealed. Laws 1963, c. 319, § 34.
54-1147.	Repealed. Laws 1963, c. 319, § 34.
54-1148.	Repealed. Laws 1963, c. 319, § 34.
54-1149.	Repealed. Laws 1963, c. 319, § 34.

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- 54-1150. Repealed. Laws 1963, c. 319, § 34.
- 54-1151. Repealed. Laws 1963, c. 319, § 34.
- 54-1152. Repealed. Laws 1963, c. 319, § 34.
- 54-1153. Repealed. Laws 1963, c. 319, § 34.
- 54-1154. Repealed. Laws 1963, c. 319, § 34.
- 54-1155. Repealed. Laws 1963, c. 319, § 34.
- 54-1156. Act, how cited.
- 54-1157. Declaration of policy.
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- 54-1164. Repealed. Laws 2001, LB 197, § 26.
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- 54-1167. Repealed. Laws 1973, LB 133, § 1.
- 54-1168. Records required; available for inspection.
- 54-1169. Department; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.
- 54-1170. Director; audio recording; appeal; procedure.
- 54-1171. Violations; penalties; injunction.
- 54-1172. Livestock Auction Market Fund; creation; use; investment.
- 54-1173. Livestock Auction Market Fund; license and permit fees; occupation tax; use.
- 54-1174. Repealed. Laws 2014, LB 884, § 34.
- 54-1175. Repealed. Laws 2004, LB 837, § 3.
- 54-1176. Repealed. Laws 2004, LB 837, § 3.
- 54-1177. Repealed. Laws 2014, LB 884, § 34.
- 54-1178. Maintenance in sanitary condition; rules and regulations.
- 54-1179. Repealed. Laws 2004, LB 837, § 3.
- 54-1180. Inspection of livestock; duties; fees; use; disposition; notice of change.
- 54-1181. Veterinarians; agreement for services; contents; compensation; liability.
- 54-1181.01. Violations; penalty.
- 54-1182. Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.
- 54-1183. Transferred to section 54-1,129.
- 54-1184. Transferred to section 54-1,130.
- 54-1185. Transferred to section 54-1,131.
- 54-1186. Transferred to section 54-1156.

**54-1101 Repealed. Laws 1961, c. 271, § 33.****54-1102 Repealed. Laws 1961, c. 271, § 33.****54-1103 Repealed. Laws 1961, c. 271, § 33.****54-1104 Repealed. Laws 1961, c. 271, § 33.****54-1105 Repealed. Laws 1961, c. 271, § 33.****54-1106 Repealed. Laws 1961, c. 271, § 33.****54-1107 Repealed. Laws 1961, c. 271, § 33.****54-1108 Repealed. Laws 1961, c. 271, § 33.****54-1109 Repealed. Laws 1961, c. 271, § 33.**

- 54-1110 Repealed. Laws 1961, c. 271, § 33.
- 54-1111 Repealed. Laws 1961, c. 271, § 33.
- 54-1112 Repealed. Laws 1961, c. 271, § 33.
- 54-1113 Repealed. Laws 1961, c. 271, § 33.
- 54-1114 Repealed. Laws 1961, c. 271, § 33.
- 54-1115 Repealed. Laws 1961, c. 271, § 33.
- 54-1116 Repealed. Laws 1961, c. 271, § 33.
- 54-1117 Repealed. Laws 1961, c. 271, § 33.
- 54-1118 Repealed. Laws 1961, c. 271, § 33.
- 54-1119 Repealed. Laws 1961, c. 271, § 33.
- 54-1120 Repealed. Laws 1961, c. 271, § 33.
- 54-1121 Repealed. Laws 1961, c. 271, § 33.
- 54-1122 Repealed. Laws 1961, c. 271, § 33.
- 54-1122.01 Repealed. Laws 1961, c. 271, § 33.
- 54-1123 Repealed. Laws 1961, c. 271, § 33.
- 54-1124 Repealed. Laws 1961, c. 271, § 33.
- 54-1124.01 Repealed. Laws 1961, c. 271, § 33.
- 54-1125 Repealed. Laws 1961, c. 271, § 33.
- 54-1126 Repealed. Laws 1961, c. 271, § 33.
- 54-1127 Repealed. Laws 1963, c. 319, § 34.
- 54-1128 Repealed. Laws 1963, c. 319, § 34.
- 54-1129 Repealed. Laws 1963, c. 319, § 34.
- 54-1130 Repealed. Laws 1963, c. 319, § 34.
- 54-1131 Repealed. Laws 1963, c. 319, § 34.
- 54-1132 Repealed. Laws 1963, c. 319, § 34.
- 54-1133 Repealed. Laws 1963, c. 319, § 34.
- 54-1134 Repealed. Laws 1963, c. 319, § 34.
- 54-1135 Repealed. Laws 1963, c. 319, § 34.
- 54-1136 Repealed. Laws 1963, c. 319, § 34.
- 54-1137 Repealed. Laws 1963, c. 319, § 34.
- 54-1138 Repealed. Laws 1963, c. 319, § 34.

**54-1139 Repealed.** Laws 1963, c. 319, § 34.

**54-1140 Repealed.** Laws 1963, c. 319, § 34.

**54-1141 Repealed.** Laws 1963, c. 319, § 34.

**54-1142 Repealed.** Laws 1963, c. 319, § 34.

**54-1143 Repealed.** Laws 1963, c. 319, § 34.

**54-1144 Repealed.** Laws 1963, c. 319, § 34.

**54-1145 Repealed.** Laws 1963, c. 319, § 34.

**54-1146 Repealed.** Laws 1963, c. 319, § 34.

**54-1147 Repealed.** Laws 1963, c. 319, § 34.

**54-1148 Repealed.** Laws 1963, c. 319, § 34.

**54-1149 Repealed.** Laws 1963, c. 319, § 34.

**54-1150 Repealed.** Laws 1963, c. 319, § 34.

**54-1151 Repealed.** Laws 1963, c. 319, § 34.

**54-1152 Repealed.** Laws 1963, c. 319, § 34.

**54-1153 Repealed.** Laws 1963, c. 319, § 34.

**54-1154 Repealed.** Laws 1963, c. 319, § 34.

**54-1155 Repealed.** Laws 1963, c. 319, § 34.

**54-1156 Act, how cited.**

Sections 54-1156 to 54-1182 shall be known and may be cited as the Livestock Auction Market Act.

**Source:** Laws 1963, c. 319, § 32, p. 973; Laws 1985, LB 97, § 3; R.S.1943, (1998), § 54-1186; Laws 1999, LB 778, § 78; Laws 2001, LB 197, § 5; Laws 2014, LB884, § 20.

**54-1157 Declaration of policy.**

It is hereby declared to be the policy of the State of Nebraska, and the purpose of the Livestock Auction Market Act, to encourage, stimulate, and stabilize the agricultural economy of the state in general, and the livestock economy in particular, by encouraging the construction, development, and productive operation of livestock auction markets as key industries of the state and those markets' particular trade areas, with all benefits of fully open, free, competitive factors, in respect to sales and purchases of livestock.

**Source:** Laws 1963, c. 319, § 1, p. 961; Laws 1999, LB 778, § 62; Laws 2001, LB 197, § 6.

A livestock auction market has sufficient public interest to be subject to public regulation under the police power. Midwest L. C. Co. v. Tri-State L. C. Co., 182 Neb. 41, 151 N.W.2d 908 (1967).

**54-1158 Terms, defined.**

As used in the Livestock Auction Market Act, unless the context otherwise requires:

- (1) Accredited veterinarian has the same meaning as in section 54-2903;
- (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 appointed pursuant to section 81-202, 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; Laws 2014, LB884, § 21; Laws 2020, LB344, § 73.

#### **54-1159 Exemptions from act.**

- (1) The Livestock Auction Market Act shall not be construed to include:
  - (a) Any place or operation where Future Farmers of America, 4-H groups, or private fairs conduct sales of livestock;
  - (b) An animal welfare organization as defined in section 54-2503;
  - (c) Any place or operation conducted for a dispersal sale of the livestock of farmers, dairypersons, or livestock breeders or feeders, where no other livestock is sold or offered for sale; or
  - (d) Any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any livestock, when such breeders assume all responsibility of such sale and the title of livestock sold. This shall apply to all purebred livestock association sales.
- (2) An exotic animal auction or exchange venue or an exotic animal auction or exchange venue organizer as defined in section 54-7,105.01 is not required to be licensed under the Livestock Auction Market Act if any bovine, camelid, caprine, ovine, or porcine allowed to be sold under the Exotic Animal Auction or Exchange Venue Act are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian and the exotic animal auction or exchange venue organizer contracts for the services of an accredited veterinari-

an to issue such certificates onsite during the auction or exchange venue for bovine, camelid, caprine, ovine, or porcine present.

**Source:** Laws 1963, c. 319, § 3, p. 962; Laws 1999, LB 778, § 64; Laws 2001, LB 197, § 8; Laws 2014, LB884, § 22.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-1160 Repealed. Laws 2013, LB 78, § 23.**

**54-1160.01 Brand inspection.**

The owner or operator of any livestock auction market located in any county outside the brand inspection area created in section 54-1,109 may voluntarily elect to provide brand inspection as provided in sections 54-1,129 to 54-1,131.

**Source:** Laws 2014, LB884, § 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 with a 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 an 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; Laws 2014, LB884, § 24.

**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.

**54-1163 Hearing; determination; factors; issuance of license.**

The hearing required by section 54-1162 shall be heard by the director. If the director determines, 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; Laws 2014, LB884, § 25.

Determination of Livestock Auction Board that license should be issued will not be disturbed if there is any evidence to support it. *Midwest L. C. Co. v. Tri-State L. C. Co.*, 182 Neb. 41, 151 N.W.2d 908 (1967).

**54-1164 Repealed. Laws 2001, LB 197, § 26.**

**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.

**54-1166 Livestock auction markets; license personal to holder; transfer; posting; termination.**

Except as otherwise provided in this section, each market license shall be personal to the holder and the facilities covered thereby and transferable without a hearing. The original or a certified copy of such license shall be posted during sale periods in a conspicuous place on the premises where the livestock auction market is conducted. The market license covering any livestock auction market which does not hold a sale for a period of one year shall terminate automatically one year from the date of the last sale conducted by the livestock auction market, and the license holder whose license is so terminated may request a hearing by filing a written request for such hearing within twenty days after the termination of the license.

**Source:** Laws 1963, c. 319, § 10, p. 966; Laws 1985, LB 97, § 2; Laws 2014, LB884, § 26.

**54-1167 Repealed. Laws 1973, LB 133, § 1.**

**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.

**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 upon fifteen days' notice served upon such market license holder either by personal service upon him or her or by registered or certified mail 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 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; Laws 2014, LB884, § 27.

**54-1170 Director; audio recording; appeal; procedure.**

The director shall keep an audio recording 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; Laws 2014, LB884, § 28.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**54-1171 Violations; penalties; injunction.**

Any person who violates any provision or requirements of the Livestock Auction Market Act is guilty of a Class II misdemeanor. Each day any person operates or conducts a livestock auction market in this state without a license as prescribed in such act is considered a separate offense. The director may institute proceedings to enjoin the operation of a livestock auction market if the person sought to be enjoined is operating a livestock auction market without a market license in good standing as provided in such act.

**Source:** Laws 1963, c. 319, § 15, p. 969; Laws 1977, LB 39, § 35; Laws 1999, LB 778, § 70; Laws 2001, LB 197, § 14.

**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.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**54-1173 Livestock Auction Market Fund; license and permit fees; occupation tax; use.**

The license and permit fees collected as provided by the Livestock Auction Market Act are an occupation tax and shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering such act and shall be paid out only on vouchers approved by the director and upon the warrant or warrants issued by the Director of Administrative Services. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium.

**Source:** Laws 1963, c. 319, § 17, p. 969; Laws 1969, c. 584, § 54, p. 2379; Laws 1995, LB 7, § 58; Laws 1999, LB 778, § 72; Laws 2001, LB 197, § 16; Laws 2014, LB884, § 29.

**54-1174 Repealed. Laws 2014, LB 884, § 34.**

**54-1175 Repealed. Laws 2004, LB 837, § 3.**

**54-1176 Repealed. Laws 2004, LB 837, § 3.**

**54-1177 Repealed. Laws 2014, LB 884, § 34.**

**54-1178 Maintenance in sanitary condition; rules and regulations.**

Every livestock auction market shall be maintained in a sanitary condition under the rules and regulations as prescribed by the director.

**Source:** Laws 1963, c. 319, § 22, p. 970.

**54-1179 Repealed. Laws 2004, LB 837, § 3.**

**54-1180 Inspection of livestock; duties; fees; use; disposition; notice of change.**

All cattle, calves, swine, sheep, and goats, upon entering a livestock auction market, shall be inspected for health before being offered for sale. Such inspection shall be made by a designated veterinarian. The fees for such inspection shall be established by rules and regulations of the department and shall be collected by the operator of the livestock auction market. Such fees shall be used to pay the fees of necessary inspections and for no other purpose and shall be remitted as may be provided by regulation. The fees shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund and shall be expended exclusively to pay the fees of providing necessary inspections at the livestock auction market which has remitted such fees. Each designated veterinarian making market inspections shall be paid twenty-five dollars for each regularly scheduled sale day in each calendar month as a guaranteed minimum salary for providing adequate inspection services. If the fees collected each calendar month by the market operator do not equal such amount, the market operator shall make up the difference in his or her remittance to the state. The rules and regulations establishing fees for such inspection shall not be adopted, amended, or repealed until after notice by mail to each market licensee and designated veterinarian of the time and place of hearing on the question of adoption, amendment, or repeal of such rules and regulations; such notice shall be mailed at least ten days prior to the date of

hearing and shall be sufficient if addressed to the last-known address of each market licensee and designated veterinarian shown on the records of the department.

**Source:** Laws 1963, c. 319, § 24, p. 971; Laws 1965, c. 334, § 5, p. 956; Laws 1969, c. 454, § 1, p. 1543; Laws 2001, LB 197, § 20; Laws 2014, LB884, § 30.

**54-1181 Veterinarians; agreement for services; contents; compensation; liability.**

The State Veterinarian shall make the designation of the veterinarians required by sections 54-1180 and 54-1182 by entering into an agreement with any accredited veterinarian for his or her professional services in performing necessary inspections. Such agreement shall provide that the State Veterinarian may terminate it at any time for what he or she deems to be just cause and shall further provide that the state pay such veterinarian a fee as established by section 54-1180, which amount shall be paid monthly from the Livestock Auction Market Fund. Such agreement shall make the designated veterinarian an agent for the Department of Agriculture to perform the duties assigned by sections 54-1180 and 54-1182, and the rules and regulations prescribed by the department, but shall not be deemed to make the designated veterinarian an officer or employee of the state. The orders of such designated veterinarian, issued in the performance of the duties assigned under sections 54-1180 and 54-1182 and the rules and regulations prescribed by the department, shall have the same force and effect as though such order had been made by the State Veterinarian. Designated veterinarians shall not be liable for reasonable acts performed to carry out the duties as set forth in sections 54-1180 and 54-1182 and the rules and regulations prescribed by the department pursuant to such sections.

**Source:** Laws 1963, c. 319, § 25, p. 971; Laws 1965, c. 334, § 6, p. 957; Laws 1969, c. 454, § 2, p. 1544; Laws 2001, LB 197, § 21; Laws 2014, LB884, § 31.

**54-1181.01 Violations; penalty.**

Any person engaging in livestock commerce at a licensed livestock auction market who violates any provision of sections 54-1180 and 54-1181, or any rules or regulations duly promulgated thereunder, shall be guilty of a Class II misdemeanor.

**Source:** Laws 1969, c. 454, § 3, p. 1545; Laws 1977, LB 39, § 36.

**54-1182 Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.**

Any livestock sold or disposed of at a livestock auction market, before removal therefrom, shall be released by the designated veterinarian and treated to conform with the health requirements of the rules and regulations prescribed by the department for the movement of livestock. When required, the designated veterinarian shall furnish each owner with documentation showing such inspection, treatment, or quarantine. No such livestock for interstate or intra-state shipment shall be released until all the requirements of the state of its destination have been complied with. Any diseased or exposed livestock shall be

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handled in accordance with the rules and regulations as prescribed by the department.

**Source:** Laws 1963, c. 319, § 26, p. 972; Laws 1965, c. 334, § 7, p. 957; Laws 1999, LB 778, § 75; Laws 2001, LB 197, § 22; Laws 2003, LB 160, § 8; Laws 2014, LB884, § 32.

**54-1183 Transferred to section 54-1,129.**

**54-1184 Transferred to section 54-1,130.**

**54-1185 Transferred to section 54-1,131.**

**54-1186 Transferred to section 54-1156.**

ARTICLE 12

GRAZING CATTLE OF ANOTHER STATE

Section

54-1201. Repealed. Laws 1999, LB 533, § 1.  
54-1202. Repealed. Laws 1999, LB 533, § 1.  
54-1203. Repealed. Laws 1999, LB 533, § 1.

**54-1201 Repealed. Laws 1999, LB 533, § 1.**

**54-1202 Repealed. Laws 1999, LB 533, § 1.**

**54-1203 Repealed. Laws 1999, LB 533, § 1.**

ARTICLE 13

BRUCELLOSIS

(a) GENERAL PROVISIONS

Section

54-1301. Repealed. Laws 1967, c. 339, § 18.  
54-1302. Repealed. Laws 1967, c. 339, § 18.  
54-1303. Repealed. Laws 1967, c. 339, § 18.  
54-1304. Repealed. Laws 1967, c. 339, § 18.  
54-1305. Repealed. Laws 1967, c. 339, § 18.  
54-1306. Repealed. Laws 1967, c. 339, § 18.  
54-1307. Repealed. Laws 1967, c. 339, § 18.  
54-1308. Repealed. Laws 1967, c. 339, § 18.  
54-1309. Repealed. Laws 1967, c. 339, § 18.  
54-1310. Repealed. Laws 1967, c. 339, § 18.  
54-1311. Repealed. Laws 1967, c. 339, § 18.  
54-1312. Repealed. Laws 1967, c. 339, § 18.  
54-1313. Repealed. Laws 1967, c. 339, § 18.  
54-1314. Repealed. Laws 1967, c. 339, § 18.  
54-1315. Repealed. Laws 1967, c. 339, § 18.  
54-1316. Repealed. Laws 1967, c. 339, § 18.  
54-1317. Repealed. Laws 1967, c. 339, § 18.  
54-1318. Repealed. Laws 1967, c. 339, § 18.  
54-1319. Repealed. Laws 1967, c. 339, § 18.  
54-1320. Repealed. Laws 1967, c. 339, § 18.  
54-1321. Repealed. Laws 1967, c. 339, § 18.  
54-1322. Repealed. Laws 1967, c. 339, § 18.  
54-1323. Repealed. Laws 1967, c. 339, § 18.  
54-1324. Repealed. Laws 1967, c. 339, § 18.  
54-1325. Repealed. Laws 1967, c. 339, § 18.

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### Section

54-1326. Repealed. Laws 1967, c. 339, § 18.  
54-1327. Repealed. Laws 1967, c. 339, § 18.  
54-1328. Repealed. Laws 1967, c. 339, § 18.  
54-1329. Repealed. Laws 1967, c. 339, § 18.  
54-1330. Repealed. Laws 1967, c. 339, § 18.  
54-1331. Repealed. Laws 1983, LB 573, § 20.  
54-1332. Repealed. Laws 1983, LB 573, § 20.  
54-1333. Repealed. Laws 1983, LB 573, § 20.  
54-1334. Repealed. Laws 1983, LB 573, § 20.  
54-1335. Repealed. Laws 1983, LB 573, § 20.  
54-1336. Repealed. Laws 1983, LB 573, § 20.  
54-1337. Repealed. Laws 1983, LB 573, § 20.  
54-1338. Repealed. Laws 1983, LB 573, § 20.  
54-1339. Repealed. Laws 1983, LB 573, § 20.  
54-1339.01. Repealed. Laws 1983, LB 573, § 20.  
54-1340. Repealed. Laws 1983, LB 573, § 20.  
54-1341. Repealed. Laws 1983, LB 573, § 20.  
54-1342. Repealed. Laws 1983, LB 573, § 20.  
54-1343. Repealed. Laws 1983, LB 573, § 20.  
54-1344. Repealed. Laws 1983, LB 573, § 20.  
54-1345. Repealed. Laws 1983, LB 573, § 20.  
54-1346. Repealed. Laws 1983, LB 573, § 20.  
54-1347. Repealed. Laws 1983, LB 573, § 20.

### (b) NEBRASKA SWINE BRUCELLOSIS ACT

54-1348. Repealed. Laws 2020, LB344, § 82.  
54-1349. Repealed. Laws 2020, LB344, § 82.  
54-1350. Repealed. Laws 2020, LB344, § 82.  
54-1351. Repealed. Laws 2020, LB344, § 82.  
54-1352. Repealed. Laws 2020, LB344, § 82.  
54-1353. Repealed. Laws 2020, LB344, § 82.  
54-1354. Repealed. Laws 2020, LB344, § 82.  
54-1355. Repealed. Laws 2020, LB344, § 82.  
54-1356. Repealed. Laws 2020, LB344, § 82.  
54-1357. Repealed. Laws 2020, LB344, § 82.  
54-1358. Repealed. Laws 2020, LB344, § 82.  
54-1359. Repealed. Laws 2020, LB344, § 82.  
54-1360. Repealed. Laws 2020, LB344, § 82.  
54-1361. Repealed. Laws 2020, LB344, § 82.  
54-1362. Repealed. Laws 2020, LB344, § 82.  
54-1363. Repealed. Laws 2020, LB344, § 82.  
54-1364. Repealed. Laws 2020, LB344, § 82.  
54-1365. Repealed. Laws 2020, LB344, § 82.  
54-1366. Repealed. Laws 2020, LB344, § 82.

### (c) NEBRASKA BOVINE BRUCELLOSIS ACT

54-1367. Repealed. Laws 2020, LB344, § 82.  
54-1368. Repealed. Laws 2020, LB344, § 82.  
54-1369. Repealed. Laws 2020, LB344, § 82.  
54-1370. Repealed. Laws 2020, LB344, § 82.  
54-1371. Brucellosis Control Cash Fund; created; use; investment; termination date.  
54-1372. Repealed. Laws 2020, LB344, § 82.  
54-1373. Repealed. Laws 2020, LB344, § 82.  
54-1374. Repealed. Laws 2020, LB344, § 82.  
54-1375. Repealed. Laws 2020, LB344, § 82.  
54-1376. Repealed. Laws 2020, LB344, § 82.  
54-1377. Repealed. Laws 2020, LB344, § 82.  
54-1378. Repealed. Laws 2020, LB344, § 82.  
54-1379. Repealed. Laws 2020, LB344, § 82.  
54-1380. Repealed. Laws 2020, LB344, § 82.  
54-1381. Repealed. Laws 2020, LB344, § 82.

## Section

54-1382.	Repealed. Laws 2020, LB344, § 82.
54-1383.	Repealed. Laws 2020, LB344, § 82.
54-1384.	Repealed. Laws 2020, LB344, § 82.

## (a) GENERAL PROVISIONS

- 54-1301 Repealed. Laws 1967, c. 339, § 18.
- 54-1302 Repealed. Laws 1967, c. 339, § 18.
- 54-1303 Repealed. Laws 1967, c. 339, § 18.
- 54-1304 Repealed. Laws 1967, c. 339, § 18.
- 54-1305 Repealed. Laws 1967, c. 339, § 18.
- 54-1306 Repealed. Laws 1967, c. 339, § 18.
- 54-1307 Repealed. Laws 1967, c. 339, § 18.
- 54-1308 Repealed. Laws 1967, c. 339, § 18.
- 54-1309 Repealed. Laws 1967, c. 339, § 18.
- 54-1310 Repealed. Laws 1967, c. 339, § 18.
- 54-1311 Repealed. Laws 1967, c. 339, § 18.
- 54-1312 Repealed. Laws 1967, c. 339, § 18.
- 54-1313 Repealed. Laws 1967, c. 339, § 18.
- 54-1314 Repealed. Laws 1967, c. 339, § 18.
- 54-1315 Repealed. Laws 1967, c. 339, § 18.
- 54-1316 Repealed. Laws 1967, c. 339, § 18.
- 54-1317 Repealed. Laws 1967, c. 339, § 18.
- 54-1318 Repealed. Laws 1967, c. 339, § 18.
- 54-1319 Repealed. Laws 1967, c. 339, § 18.
- 54-1320 Repealed. Laws 1967, c. 339, § 18.
- 54-1321 Repealed. Laws 1967, c. 339, § 18.
- 54-1322 Repealed. Laws 1967, c. 339, § 18.
- 54-1323 Repealed. Laws 1967, c. 339, § 18.
- 54-1324 Repealed. Laws 1967, c. 339, § 18.
- 54-1325 Repealed. Laws 1967, c. 339, § 18.
- 54-1326 Repealed. Laws 1967, c. 339, § 18.
- 54-1327 Repealed. Laws 1967, c. 339, § 18.
- 54-1328 Repealed. Laws 1967, c. 339, § 18.



54-1329 Repealed. Laws 1967, c. 339, § 18.  
54-1330 Repealed. Laws 1967, c. 339, § 18.  
54-1331 Repealed. Laws 1983, LB 573, § 20.  
54-1332 Repealed. Laws 1983, LB 573, § 20.  
54-1333 Repealed. Laws 1983, LB 573, § 20.  
54-1334 Repealed. Laws 1983, LB 573, § 20.  
54-1335 Repealed. Laws 1983, LB 573, § 20.  
54-1336 Repealed. Laws 1983, LB 573, § 20.  
54-1337 Repealed. Laws 1983, LB 573, § 20.  
54-1338 Repealed. Laws 1983, LB 573, § 20.  
54-1339 Repealed. Laws 1983, LB 573, § 20.  
54-1339.01 Repealed. Laws 1983, LB 573, § 20.  
54-1340 Repealed. Laws 1983, LB 573, § 20.  
54-1341 Repealed. Laws 1983, LB 573, § 20.  
54-1342 Repealed. Laws 1983, LB 573, § 20.  
54-1343 Repealed. Laws 1983, LB 573, § 20.  
54-1344 Repealed. Laws 1983, LB 573, § 20.  
54-1345 Repealed. Laws 1983, LB 573, § 20.  
54-1346 Repealed. Laws 1983, LB 573, § 20.  
54-1347 Repealed. Laws 1983, LB 573, § 20.

(b) NEBRASKA SWINE BRUCELLOSIS ACT

54-1348 Repealed. Laws 2020, LB344, § 82.  
54-1349 Repealed. Laws 2020, LB344, § 82.  
54-1350 Repealed. Laws 2020, LB344, § 82.  
54-1351 Repealed. Laws 2020, LB344, § 82.  
54-1352 Repealed. Laws 2020, LB344, § 82.  
54-1353 Repealed. Laws 2020, LB344, § 82.  
54-1354 Repealed. Laws 2020, LB344, § 82.  
54-1355 Repealed. Laws 2020, LB344, § 82.  
54-1356 Repealed. Laws 2020, LB344, § 82.  
54-1357 Repealed. Laws 2020, LB344, § 82.

**54-1358 Repealed. Laws 2020, LB344, § 82.**

**54-1359 Repealed. Laws 2020, LB344, § 82.**

**54-1360 Repealed. Laws 2020, LB344, § 82.**

**54-1361 Repealed. Laws 2020, LB344, § 82.**

**54-1362 Repealed. Laws 2020, LB344, § 82.**

**54-1363 Repealed. Laws 2020, LB344, § 82.**

**54-1364 Repealed. Laws 2020, LB344, § 82.**

**54-1365 Repealed. Laws 2020, LB344, § 82.**

**54-1366 Repealed. Laws 2020, LB344, § 82.**

(c) NEBRASKA BOVINE BRUCELLOSIS ACT

**54-1367 Repealed. Laws 2020, LB344, § 82.**

**54-1368 Repealed. Laws 2020, LB344, § 82.**

**54-1369 Repealed. Laws 2020, LB344, § 82.**

**54-1370 Repealed. Laws 2020, LB344, § 82.**

**54-1371 Brucellosis Control Cash Fund; created; use; investment; termination date.**

The Brucellosis Control Cash Fund is hereby created. Expenditures from the fund may be made to conduct brucellosis testing under the Nebraska Bovine Brucellosis 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. The fund terminates on November 14, 2020, and the State Treasurer shall transfer any money in the fund on such date to the Animal Health and Disease Control Cash Fund.

**Source:** Laws 1983, LB 573, § 5; Laws 1995, LB 7, § 59; Laws 2016, LB909, § 6; Laws 2020, LB344, § 74.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-1372 Repealed. Laws 2020, LB344, § 82.**

**54-1373 Repealed. Laws 2020, LB344, § 82.**

**54-1374 Repealed. Laws 2020, LB344, § 82.**

**54-1375 Repealed. Laws 2020, LB344, § 82.**

**54-1376 Repealed. Laws 2020, LB344, § 82.**

**54-1377 Repealed. Laws 2020, LB344, § 82.**

**54-1378 Repealed. Laws 2020, LB344, § 82.**

**54-1379 Repealed. Laws 2020, LB344, § 82.**

- 54-1380 Repealed. Laws 2020, LB344, § 82.**
- 54-1381 Repealed. Laws 2020, LB344, § 82.**
- 54-1382 Repealed. Laws 2020, LB344, § 82.**
- 54-1383 Repealed. Laws 2020, LB344, § 82.**
- 54-1384 Repealed. Laws 2020, LB344, § 82.**

**ARTICLE 14  
SCABIES**

- Section
- 54-1401. Repealed. Laws 2015, LB 91, § 1.
  - 54-1402. Repealed. Laws 2015, LB 91, § 1.
  - 54-1403. Repealed. Laws 2015, LB 91, § 1.
  - 54-1404. Repealed. Laws 2015, LB 91, § 1.
  - 54-1405. Repealed. Laws 2015, LB 91, § 1.
  - 54-1406. Repealed. Laws 2015, LB 91, § 1.
  - 54-1407. Repealed. Laws 2015, LB 91, § 1.
  - 54-1408. Repealed. Laws 2015, LB 91, § 1.
  - 54-1409. Repealed. Laws 2015, LB 91, § 1.
  - 54-1410. Repealed. Laws 2015, LB 91, § 1.
  - 54-1411. Repealed. Laws 2015, LB 91, § 1.
  - 54-1412. Transferred to section 54-724.01.
  - 54-1413. Transferred to section 54-724.02.

- 54-1401 Repealed. Laws 2015, LB 91, § 1.**
- 54-1402 Repealed. Laws 2015, LB 91, § 1.**
- 54-1403 Repealed. Laws 2015, LB 91, § 1.**
- 54-1404 Repealed. Laws 2015, LB 91, § 1.**
- 54-1405 Repealed. Laws 2015, LB 91, § 1.**
- 54-1406 Repealed. Laws 2015, LB 91, § 1.**
- 54-1407 Repealed. Laws 2015, LB 91, § 1.**
- 54-1408 Repealed. Laws 2015, LB 91, § 1.**
- 54-1409 Repealed. Laws 2015, LB 91, § 1.**
- 54-1410 Repealed. Laws 2015, LB 91, § 1.**
- 54-1411 Repealed. Laws 2015, LB 91, § 1.**
- 54-1412 Transferred to section 54-724.01.**
- 54-1413 Transferred to section 54-724.02.**

**ARTICLE 15  
HOG CHOLERA**

- Section
- 54-1501. Repealed. Laws 2015, LB 91, § 1.
  - 54-1502. Repealed. Laws 1983, LB 264, § 3.

## Section

54-1503.	Repealed. Laws 2015, LB 91, § 1.
54-1504.	Repealed. Laws 1987, LB 20, § 9.
54-1505.	Repealed. Laws 2015, LB 91, § 1.
54-1506.	Repealed. Laws 1983, LB 264, § 3.
54-1507.	Repealed. Laws 1987, LB 20, § 9.
54-1507.01.	Repealed. Laws 1987, LB 20, § 9.
54-1508.	Repealed. Laws 2015, LB 91, § 1.
54-1509.	Repealed. Laws 2015, LB 91, § 1.
54-1510.	Repealed. Laws 2015, LB 91, § 1.
54-1511.	Repealed. Laws 2015, LB 91, § 1.
54-1512.	Repealed. Laws 2015, LB 91, § 1.
54-1513.	Repealed. Laws 2015, LB 91, § 1.
54-1514.	Repealed. Laws 2015, LB 91, § 1.
54-1515.	Repealed. Laws 2015, LB 91, § 1.
54-1516.	Repealed. Laws 2015, LB 91, § 1.
54-1517.	Repealed. Laws 2015, LB 91, § 1.
54-1518.	Repealed. Laws 2015, LB 91, § 1.
54-1519.	Repealed. Laws 2015, LB 91, § 1.
54-1520.	Repealed. Laws 2015, LB 91, § 1.
54-1521.	Repealed. Laws 2015, LB 91, § 1.
54-1522.	Repealed. Laws 2015, LB 91, § 1.
54-1523.	Repealed. Laws 2015, LB 91, § 1.

**54-1501 Repealed. Laws 2015, LB 91, § 1.**

**54-1502 Repealed. Laws 1983, LB 264, § 3.**

**54-1503 Repealed. Laws 2015, LB 91, § 1.**

**54-1504 Repealed. Laws 1987, LB 20, § 9.**

**54-1505 Repealed. Laws 2015, LB 91, § 1.**

**54-1506 Repealed. Laws 1983, LB 264, § 3.**

**54-1507 Repealed. Laws 1987, LB 20, § 9.**

**54-1507.01 Repealed. Laws 1987, LB 20, § 9.**

**54-1508 Repealed. Laws 2015, LB 91, § 1.**

**54-1509 Repealed. Laws 2015, LB 91, § 1.**

**54-1510 Repealed. Laws 2015, LB 91, § 1.**

**54-1511 Repealed. Laws 2015, LB 91, § 1.**

**54-1512 Repealed. Laws 2015, LB 91, § 1.**

**54-1513 Repealed. Laws 2015, LB 91, § 1.**

**54-1514 Repealed. Laws 2015, LB 91, § 1.**

**54-1515 Repealed. Laws 2015, LB 91, § 1.**

**54-1516 Repealed. Laws 2015, LB 91, § 1.**

**54-1517 Repealed. Laws 2015, LB 91, § 1.**

**54-1518 Repealed. Laws 2015, LB 91, § 1.**

**54-1519 Repealed. Laws 2015, LB 91, § 1.**

**54-1520 Repealed. Laws 2015, LB 91, § 1.**

**54-1521 Repealed. Laws 2015, LB 91, § 1.**

**54-1522 Repealed. Laws 2015, LB 91, § 1.**

**54-1523 Repealed. Laws 2015, LB 91, § 1.**

## ARTICLE 16

### PATHOGEN-FREE SWINE

#### Section

54-1601. SPF, defined.

54-1602. SPF Accredited; advertisement; subject to sections.

54-1603. University of Nebraska Institute of Agriculture and Natural Resources; accreditation.

54-1604. University of Nebraska Institute of Agriculture and Natural Resources; accreditation; withhold.

54-1605. Violations; penalty.

#### **54-1601 SPF, defined.**

As used in sections 54-1601 to 54-1605, unless the context otherwise requires, SPF shall mean specific pathogen-free swine, which must conform to the conditions and health standards prescribed by the University of Nebraska Institute of Agriculture and Natural Resources or its designated agents under such sections.

**Source:** Laws 1967, c. 338, § 1, p. 905; Laws 1991, LB 663, § 37.

#### **54-1602 SPF Accredited; advertisement; subject to sections.**

Every person, partnership, limited liability company, firm, association, or corporation which issues, uses, or circulates any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description of or pertaining to SPF swine intended for propagation or sale or sold or offered for sale in which the words SPF Accredited, Nebraska SPF Accredited, or similar words or phrases are used or employed or in which are used or employed signs, symbols, maps, diagrams, pictures, words, or phrases expressly or impliedly stating or representing that such SPF swine comply with or conform to the standards or requirements recommended or approved by the University of Nebraska Institute of Agriculture and Natural Resources or by any legal entity or organization designated by such institute shall be subject to the provisions of sections 54-1601 to 54-1605.

**Source:** Laws 1967, c. 338, § 2, p. 905; Laws 1969, c. 457, § 1, p. 1552; Laws 1991, LB 663, § 38; Laws 1993, LB 121, § 343.

#### **54-1603 University of Nebraska Institute of Agriculture and Natural Resources; accreditation.**

Every person, firm, partnership, limited liability company, association, or corporation subject to the provisions of sections 54-1601 to 54-1605 shall observe, perform, and comply with all rules, regulations, and requirements fixed, established, or specified by the University of Nebraska Institute of Agriculture and Natural Resources or its designated agents as to what SPF

swine raised or to be raised in Nebraska shall be eligible for accreditation as provided by such sections as to standards, requirements, and forms of and for accreditation under such sections. No accreditation within the provisions of such sections shall be made or authorized except by or through the institute or its designated agents.

**Source:** Laws 1967, c. 338, § 3, p. 906; Laws 1991, LB 663, § 39; Laws 1994, LB 884, § 71.

**54-1604 University of Nebraska Institute of Agriculture and Natural Resources; accreditation; withhold.**

The University of Nebraska Institute of Agriculture and Natural Resources or its designated agency may withhold Nebraska SPF accreditation from any producer of SPF swine who is engaged in or attempting to engage in any dishonest practice for the purpose of evading the provisions of sections 54-1601 to 54-1605, including standards, rules, and regulations approved by the institute to cover accreditation.

**Source:** Laws 1967, c. 338, § 4, p. 906; Laws 1991, LB 663, § 40.

**54-1605 Violations; penalty.**

It shall be unlawful for any person, partnership, limited liability company, firm, association, or corporation to issue, make, use, or circulate any accreditation without the authority and approval of the University of Nebraska Institute of Agriculture and Natural Resources or its duly authorized agency. Every person, partnership, limited liability company, firm, association, or corporation who violates any of the provisions of sections 54-1601 to 54-1605 pertaining to accreditation shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1967, c. 338, § 5, p. 906; Laws 1977, LB 39, § 45; Laws 1991, LB 663, § 41; Laws 1993, LB 121, § 344.

**ARTICLE 17**

**LIVESTOCK DEALER LICENSING ACT**

**Cross References**

**License Suspension Act**, see section 43-3301.

**Section**

- 54-1701. Public policy.
- 54-1702. Act, how cited.
- 54-1703. Terms, defined.
- 54-1704. Livestock dealer; license; application; bond; form; renewal; fee; disposition.
- 54-1705. State Veterinarian; powers.
- 54-1706. Violations; order to appear; notice; hearing; appeal.
- 54-1707. Hearings; procedure; order; appeal.
- 54-1708. State Veterinarian; rules and regulations; adopt; inspections; fees.
- 54-1709. Licensed dealer; records; contents; access.
- 54-1710. Facility; standards; State Veterinarian; prescribe; concentration points; inspection; approval.
- 54-1711. Violations; penalty.

**54-1701 Public policy.**

Sections 54-1701 to 54-1711 shall be deemed an exercise of the police powers of the State of Nebraska for the protection of the agricultural public to facilitate the control and prevention of diseases in domestic animals by requiring

compliance with the laws of this state enacted for that purpose together with such regulations as may have been or may be made pursuant thereto. It is, therefore, declared to be the public policy of this state that all dealers as defined in sections 54-1701 to 54-1711 shall be subject to sections 54-1701 to 54-1711, and that all the provisions of sections 54-1701 to 54-1711 shall be liberally construed for the accomplishment of this purpose.

**Source:** Laws 1969, c. 447, § 1, p. 1493.

**54-1702 Act, how cited.**

Sections 54-1701 to 54-1711 may be cited as the Nebraska Livestock Dealer Licensing Act.

**Source:** Laws 1969, c. 447, § 2, p. 1493.

**54-1703 Terms, defined.**

As used in sections 54-1701 to 54-1711, unless the context otherwise requires:

- (1) Department shall mean the Department of Agriculture;
- (2) Director shall mean the Director of Agriculture;
- (3) State Veterinarian shall mean the person officially appointed to this position by the director;
- (4) Livestock shall mean cattle, sheep, and swine;
- (5) Livestock dealer shall mean any person, partnership, limited liability company, association, or corporation who is engaged in the business of buying or selling livestock for the purpose of resale within this state either for his or her own account or as the employee or agent of the seller or purchaser, except an agent or employee who buys and sells exclusively for the account of a licensed dealer. Livestock dealer shall also include those who buy or sell from a concentration point. Livestock dealer shall not include a person or persons engaged in a farm or ranch operation who purchases livestock for utilization of same as an integral part of the livestock and livestock product production of his or her farm or ranch operation or purebred sales held by the breed registry associations or the purchase or sale of livestock primarily used for research, experimentation, exhibition, or entertainment purposes, including sales by the Future Farmers of America or 4-H groups; and
- (6) Concentration point shall mean any place of business where livestock is assembled for resale.

**Source:** Laws 1969, c. 447, § 3, p. 1493; Laws 1972, LB 1361, § 1; Laws 1993, LB 121, § 345.

**54-1704 Livestock dealer; license; application; bond; form; renewal; fee; disposition.**

No person as defined in the Nebraska Livestock Dealer Licensing Act as a livestock dealer shall:

- (1) Engage in the business of buying, selling, or otherwise dealing in livestock in this state without a valid and effective license issued by the Director of Agriculture under the provisions of this section. All applications for a livestock dealer license or renewal of such license shall be made on forms prescribed for that purpose by the State Veterinarian. The department may by rule and regulation prescribe additional information to be contained in such application.

The application shall be filed annually with the department on or before October 1 of each year with the applicable fee of fifty dollars. The license fees collected as provided by the Nebraska Livestock Dealer Licensing Act shall be deposited in the state treasury, and by the State Treasurer placed in the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering the provisions of the Nebraska Livestock Dealer Licensing Act;

(2)(a) Engage in the business of buying, selling, or otherwise dealing in livestock in this state without filing with the department, in connection with his or her application for a license, a fully executed duplicate of a valid and effective bond: (i) If he or she is registered and bonded under the provisions of the federal Packers and Stockyards Act of 1921, 7 U.S.C. 181 et seq., he or she shall file a statement in the form prescribed by the department evidencing that he or she is maintaining a valid and effective bond or its equivalent under such act; or (ii) if he or she is not registered and bonded under the provisions of the federal Packers and Stockyards Act, he or she shall furnish in connection with his or her application for a license a fully executed duplicate of a valid and effective bond in the amount of five thousand dollars or such larger amount as may be specified by regulations promulgated by the department. (b) The bond shall contain the following conditions: (i) That the principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such principal for his or her own account or for the accounts of others and such principal shall safely keep and properly disburse all funds, if any, which come into his or her hands for the purpose of paying for livestock purchased for the accounts of others; (ii) that any person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on the bond; and (iii) that at least thirty days' notice in writing shall be given to the department by the party terminating the bond; or

(3) Continue in the business of a dealer after his or her license or bond has expired, or has been suspended or revoked.

**Source:** Laws 1969, c. 447, § 4, p. 1494; Laws 1972, LB 1361, § 2; Laws 1983, LB 617, § 10; Laws 1997, LB 752, § 136; Laws 2016, LB909, § 8.

#### **54-1705 State Veterinarian; powers.**

The State Veterinarian shall have the power to:

(1) Enter premises and buildings occupied by a licensee at any reasonable time to examine books and records maintained by the licensee;

(2) Require, by general or special order, livestock dealers to file with the State Veterinarian, in such forms as he may prescribe, regular or special reports or answers, in writing to specific questions, for the purpose of furnishing information concerning livestock movement and animal disease control. Such reports may be required to be made under oath and filed within a reasonable time;

(3) Defer the granting of a license as required by sections 54-1701 to 54-1711 or suspend or revoke any such license already issued if licensee has violated the laws or regulations of this state pertaining to disease control and eradication or has knowingly committed or participated in the violation of an order or quarantine or other disciplinary order issued by the department; *Provided*, that before any license is suspended or revoked under this section, the licensee or



applicant shall be furnished with a copy of the charges made against him and upon request of the licensee a hearing shall be had before the director or his designate; and

(4) Defer the granting of a license as required by sections 54-1701 to 54-1711 or suspend or revoke any such license already issued if the licensee has failed to pay the person or persons entitled thereto the purchase price of all livestock purchased for his own account or for the accounts of others; *Provided*, that before any license is suspended or revoked under this section, the licensee or applicant shall be furnished with a copy of the charges made against him and upon request of the licensee a hearing shall be had before the director or his designate.

**Source:** Laws 1969, c. 447, § 5, p. 1495; Laws 1972, LB 1361, § 3.

**54-1706 Violations; order to appear; notice; hearing; appeal.**

(1) Whenever the director or the State Veterinarian has reason to believe that any person has violated any of the provisions of the Nebraska Livestock Dealer Licensing Act or any rules or regulations adopted and promulgated under the act, an order may be entered requiring such person to appear before the director and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice thereof which shall be given not less than twenty days before the date of such hearing. After a hearing, or if the person charged with such violation fails to appear at the time of such hearing, if the director finds such person to be in violation, he or she shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions.

(2) Any person aggrieved by any order entered by the director or other action of the director may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 447, § 6, p. 1495; Laws 1988, LB 352, § 96.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**54-1707 Hearings; procedure; order; appeal.**

(1) Hearings shall be conducted by the director or by a hearing officer designated by him or her. Provision shall be made to insure that any such hearing officer other than the director shall not have participated in the performance of investigative or prosecuting functions in the case to which he or she is assigned. The hearing shall be conducted in an impartial manner by the hearing officer who may administer oaths, rule upon offers of proof and objections, and take such other action as may be necessary. He or she shall not be bound by formal rules of evidence as observed in courts of law but shall exclude irrelevant, immaterial, or unduly repetitious evidence. The burden of proof and of proceeding with the evidence shall be on the department, and every party shall have the right to compulsory process, to representation by counsel of his or her own choosing, and to cross-examination of and confrontation by witnesses against him or her.

(2) Whenever any hearing is conducted by any person other than the director, the person conducting the same shall render a recommended decision with

appropriate proposed findings and orders disposing of all the relevant matters of fact and law involved in the proceeding. Thereafter the case may be remanded to the person or persons who conducted the hearing with such instructions as the director may deem appropriate, or the director himself or herself may perform such function and may conduct a new or supplemental hearing. The director may dispense with a recommended decision and proceed to the rendering of his or her final order thereon with appropriate findings of fact on the basis of the entire record as certified to him or her by the person conducting the hearing. Prior to each recommended and each final decision, the parties shall be afforded an opportunity to submit proposed findings, briefs, and arguments as the director may deem appropriate.

(3) Any person aggrieved by any order entered by the director or other action taken by the department may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 447, § 7, p. 1496; Laws 1988, LB 352, § 97.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**54-1708 State Veterinarian; rules and regulations; adopt; inspections; fees.**

(1) The State Veterinarian shall, subject to the approval of the director, adopt rules and regulations necessary to carry out the purposes, provisions, and intent of sections 54-1701 to 54-1711.

(2) The State Veterinarian shall make the designation of the veterinarian required by the provisions of sections 54-1701 to 54-1711 by entering into an agreement with any duly licensed veterinarian for his or her professional services in performing necessary inspections. Such agreement shall provide that the State Veterinarian may terminate it at any time for what he or she deems to be just cause. Such contract shall make the veterinarian an agent for the Department of Agriculture to perform the duties assigned by sections 54-1701 to 54-1711 and the rules and regulations prescribed by the State Veterinarian, but shall not be deemed to make the veterinarian an officer or employee of the state. The orders of such veterinarian, issued in the performance of the duties assigned him or her by sections 54-1701 to 54-1711 and the rules and regulations prescribed by the State Veterinarian shall have the same force and effect as though such order had been made by the State Veterinarian. Veterinarians, designated in accordance with the requirements of this section, shall not be liable for reasonable acts performed to carry out the duties as set forth in sections 54-1701 to 54-1711 and the rules and regulations prescribed by the State Veterinarian.

(3) Fees for such inspection and release shall be paid by the licensee.

**Source:** Laws 1969, c. 447, § 8, p. 1497; Laws 1980, LB 631, § 5.

**54-1709 Licensed dealer; records; contents; access.**

Every dealer required to be licensed under the provisions of sections 54-1701 to 54-1711 shall keep such records and accounts as shall fully and correctly disclose all purchases, sales or transfers involving livestock transactions consummated in connection with his business. The records pertaining to such business shall also disclose the true ownership of such business by stockholders or otherwise and shall contain such information as the director or State

Veterinarian may prescribe including the manner in which such records shall be kept. Every licensee shall, during all reasonable times, permit authorized employees and agents of the department to have access to and to copy any or all records relating to his business.

**Source:** Laws 1969, c. 447, § 9, p. 1498.

**54-1710 Facility; standards; State Veterinarian; prescribe; concentration points; inspection; approval.**

Livestock moving in commerce handled by dealers covered by the provisions of sections 54-1701 to 54-1711 and held at a facility shall be held at a facility conforming to standards prescribed by regulation by the State Veterinarian, and in no case shall the standards be less than the standards prescribed for livestock auction markets. Such facility shall not be used unless it has been approved by the State Veterinarian.

Livestock moving into a concentration point shall not be removed from the premises until such livestock has been inspected and released by the approved veterinarian. No livestock shall be released from a concentration point until all the requirements of the State of Nebraska or the state of destination, whichever applies, shall have been met.

**Source:** Laws 1969, c. 447, § 10, p. 1498.

**54-1711 Violations; penalty.**

Any livestock dealer who violates any of the provisions of sections 54-1701 to 54-1711 or any rule or regulation promulgated thereunder, or any order of the department after such order has become final or upon termination of any review proceeding where the order has been sustained by a court of law, shall be guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense.

**Source:** Laws 1969, c. 447, § 11, p. 1498; Laws 1977, LB 39, § 46.

**ARTICLE 18**

**SALE OF LIVESTOCK**

Section

- 54-1801. Act, how cited.
- 54-1802. Terms, defined.
- 54-1803. Purchasing slaughter livestock; unlawful acts.
- 54-1804. Slaughter livestock; purchaser; requirements.
- 54-1805. Director of Agriculture; violations; restraining order; appointment of receiver; Attorney General, county attorney; duties.
- 54-1806. Director of Agriculture; reciprocal agreements; basis.
- 54-1807. Purchasers of slaughter livestock; records; contents.
- 54-1808. Violations; penalty.
- 54-1809. Purchase of slaughter livestock; unlawful acts.
- 54-1810. Purchase of slaughter livestock; effect of section.
- 54-1811. Purchase of slaughter livestock; violations; penalties.

**54-1801 Act, how cited.**

Sections 54-1801 to 54-1808 may be cited as the Nebraska Livestock Sellers Protective Act.

**Source:** Laws 1969, c. 448, § 1, p. 1499.

**54-1802 Terms, defined.**

For purposes of the Nebraska Livestock Sellers Protective Act, unless the context otherwise requires:

- (1) Director shall mean the Director of Agriculture;
- (2) Slaughter livestock shall mean cattle, sheep, and swine produced or fed in this state and destined for immediate slaughter;
- (3) Purchaser shall mean any person, firm, corporation, or association engaged in the purchase of slaughter livestock in excess of five hundred animal units per year based upon two hundred sixty slaughtering days;
- (4) Animal unit shall consist of one head of cattle, or three calves, under four hundred fifty pounds, or five hogs, or ten sheep or lambs;
- (5) Insolvent shall mean that a person either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Act;
- (6) Person shall include individuals, firms, associations, limited liability companies, or corporations or employees, officers, or limited liability company members thereof; and
- (7) Purchase of livestock for slaughter shall mean the purchase of livestock for immediate use in manufacturing or preparing meat or meat food products.

**Source:** Laws 1969, c. 448, § 2, p. 1499; Laws 1994, LB 884, § 72.

**54-1803 Purchasing slaughter livestock; unlawful acts.**

After December 25, 1969, it shall be unlawful for any person engaged in the business of purchasing slaughter livestock to:

- (1) Purchase slaughter livestock when insolvent; or
- (2) Neglect, before the close of the next business day following the purchase of slaughter livestock or within twenty-four hours following the determination of the purchase price, whichever may occur last, to remit to the seller or his representative the full amount of the purchase cost; *Provided*, that this section does not require payment in lieu of an express agreement to the contrary.

**Source:** Laws 1969, c. 448, § 3, p. 1500.

**54-1804 Slaughter livestock; purchaser; requirements.**

Any purchaser who buys slaughter livestock other than through a selling agent who is bonded or otherwise secured to assure payment as required by the United States Packers and Stockyards Act (7 U.S.C. 181) and the rules and regulations promulgated thereunder, shall be required to register with the director, and shall provide assurance of his financial ability to faithfully and promptly account for and pay to the seller or his designated representative, the total proceeds from the sale of slaughter livestock in accordance with the requirements which the director may establish by rule and regulation in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 448, § 4, p. 1500.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**54-1805 Director of Agriculture; violations; restraining order; appointment of receiver; Attorney General, county attorney; duties.**

Whenever the director has reason to believe that the purchase of livestock for slaughter by a purchaser is causing or may reasonably be expected to result in a failure by the purchaser to fulfill obligations incurred in the purchase of livestock for slaughter or in the event of a violation of any of the provisions of sections 54-1801 to 54-1808 or the rules and regulations duly promulgated thereunder, the director may apply for a temporary or permanent injunction restraining any purchaser from purchasing slaughter livestock or violating or continuing to violate any of the provisions of sections 54-1801 to 54-1808 or any rule or regulation promulgated under sections 54-1801 to 54-1808, notwithstanding the existence of other remedies at law. For good cause shown, the district court may appoint the director or the director's designee to serve as a receiver for the purchaser for the protection of the sellers of slaughter livestock to the purchaser. It shall be the duty of each county attorney or the Attorney General to whom the director reports any violation to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

**Source:** Laws 1969, c. 448, § 5, p. 1500; Laws 1984, LB 824, § 1.

**54-1806 Director of Agriculture; reciprocal agreements; basis.**

The director shall have the power and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, federal or state, for the exchange of information and audit reports on a cooperative basis which may assist the director in the proper administration of sections 54-1801 to 54-1808.

**Source:** Laws 1969, c. 448, § 6, p. 1501.

**54-1807 Purchasers of slaughter livestock; records; contents.**

All purchasers of slaughter livestock shall keep accurate records of all transactions conducted in the ordinary course of their business. Such records shall be available for examination and audit by the director or his duly authorized agent; *Provided*, that the director or his agent shall not divulge or make known in any manner, except in hearings before a court of law, any facts or information regarding the purchaser which may be obtained by reason of such examination or audit of the records and transactions of the purchaser.

**Source:** Laws 1969, c. 448, § 7, p. 1501.

**54-1808 Violations; penalty.**

Any person violating any provision of sections 54-1801 to 54-1808 shall be guilty of a Class IV felony and shall be liable in double damages to any party injured thereby.

**Source:** Laws 1969, c. 448, § 8, p. 1501; Laws 1977, LB 39, § 47.

**54-1809 Purchase of slaughter livestock; unlawful acts.**

(1) It shall be unlawful to purchase slaughter livestock for other than cash or by negotiable instrument drawn upon a banking institution located within the same federal reserve district in which the purchaser's slaughter establishment

is situated. This section shall not require payment in cash or by negotiable instrument in lieu of an express agreement in writing to the contrary.

(2) It shall be unlawful for a purchaser to engage in business in such a way that the purchaser causes accounts receivable to be paid directly to an out-of-state depository not under the control of the purchaser rather than directly to the purchaser if such business practice circumvents the rights of the seller.

**Source:** Laws 1975, LB 436, § 1; Laws 1984, LB 824, § 2.

**54-1810 Purchase of slaughter livestock; effect of section.**

Nothing in section 54-1809 shall be considered a limitation placed upon any purchaser of slaughter livestock to conduct business or other financial affairs or place accounts with any other financial institutions outside the state.

**Source:** Laws 1975, LB 436, § 2.

**54-1811 Purchase of slaughter livestock; violations; penalties.**

Any person, firm, corporation, or association, or any agent thereof, who shall violate the provisions of sections 54-1809 to 54-1811, shall be guilty of a Class II misdemeanor.

**Source:** Laws 1975, LB 436, § 3; Laws 1977, LB 39, § 48.

**ARTICLE 19**

**MEAT AND POULTRY INSPECTION**

**Cross References**

License Suspension Act, see section 43-3301.

(a) NEBRASKA MEAT AND POULTRY INSPECTION LAW

Section	
54-1901.	Act, how cited.
54-1902.	Terms, defined.
54-1903.	Intent of Nebraska Meat and Poultry Inspection Law.
54-1904.	License; application; inspection; renewal; fee; suspension; when.
54-1905.	Hearings; how conducted; order; appeal.
54-1906.	Director of Agriculture; rules and regulations; adopt; requirements.
54-1907.	Records; contents; access.
54-1908.	Director of Agriculture; powers.
54-1909.	Unlawful acts.
54-1910.	Inspection of products; when completed.
54-1911.	Exempted product; adulterated or misbranded; seized by inspector; when.
54-1912.	Product found adulterated or misbranded; seizure; destruction; procedure.
54-1913.	Officer, inspector, employee of state; bribes, acceptances; interference; penalty.
54-1914.	Director of Agriculture; violations; investigations; powers; subpoenas.
54-1915.	Director of Agriculture; cooperate with United States Department of Agriculture.
54-1915.01.	Acquisition of meat from livestock by an informed end consumer; allowed; conditions.
54-1915.02.	Independent Processor Assistance Program; created; purpose; department; powers and duties.
	(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION
54-1916.	Repealed. Laws 2012, LB 782, § 253.

(a) NEBRASKA MEAT AND POULTRY INSPECTION LAW

**54-1901 Act, how cited.**

Sections 54-1901 to 54-1915.02 shall be known and may be cited as the Nebraska Meat and Poultry Inspection Law.

**Source:** Laws 1969, c. 449, § 1, p. 1502; Laws 2021, LB324, § 1.  
Effective date August 28, 2021.

**54-1902 Terms, defined.**

For purposes of the Nebraska Meat and Poultry Inspection Law, unless the context otherwise requires:

(1) Adulterated shall apply to any livestock product or poultry product under one or more of the following circumstances:

(a) If it fails to conform to the requirements established by the Nebraska Pure Food Act;

(b) If it has been subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act approved June 25, 1938, (52 Stat. 1040) and acts amendatory thereof or supplementary thereto; or

(c) If it is margarine containing animal fat and any of the raw material used therein consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) Animal share means an ownership interest in an animal or herd of animals created by a written contract between an informed end consumer and a farmer or rancher that includes a bill of sale to the consumer for an ownership interest in the animal or herd and a boarding provision under which the consumer boards the animal or herd with the farmer or rancher for care and processing and the consumer is entitled to receive a share of meat from the animal or herd;

(3) Capable of use as human food shall apply to any wholesome livestock or poultry carcass or part or product of any such carcass, unless it is denatured or otherwise identified as required by rules and regulations prescribed by the director to preclude its use as human food or it is naturally inedible by humans;

(4) Container or package shall mean any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover;

(5) Department shall mean the Department of Agriculture;

(6) Director shall mean the Director of Agriculture;

(7) Establishment shall mean any building or structure in which slaughtering, butchering, meat canning, meat packing, meat manufacturing, poultry canning, poultry packing, poultry manufacturing, pet feed manufacturing, or rendering is carried on and the ground upon which such building or structure is erected and so much ground adjacent thereto as is used in carrying on the business of such establishment, including drains, gutters, and cesspools used in connection with the establishment and any place, including where a mobile or remote processing unit is located, or vehicle where livestock, poultry, livestock products, poultry products, meat food products, or poultry food products are prepared, manufactured, stored, sold, offered for sale, or exposed for sale. Establishment does not include operations under federal inspection;

(8) Federal Meat Inspection Act shall mean the act so entitled approved March 4, 1907, (34 Stat. 1260) as amended by the Wholesome Meat Act (81 Stat. 584), federal Poultry Products Inspection Act shall mean the act so

entitled approved August 28, 1957, (71 Stat. 441) as amended by the Wholesome Poultry Products Act (82 Stat. 791), and federal acts shall mean the Federal Meat Inspection Act and the federal Poultry Products Inspection Act;

(9) Hydrolyzed whole poultry shall mean the animal feed product resulting from the hydrolyzation of whole carcasses of culled or dead, undecomposed poultry as such product is defined in the Official Publication of the Association of American Feed Control Officials;

(10) Immediate container shall mean any consumer package or any other container in which livestock products or poultry products which are not consumer-packaged are packed;

(11) Inspector shall mean an employee or official or agent of the State of Nebraska authorized by the director, or any employee or official of the federal government or any governmental subdivision of this state authorized by the director, to perform any inspection functions under the Nebraska Meat and Poultry Inspection Law under an agreement between the director and any governmental subdivision or other governmental agency;

(12) Intrastate commerce shall mean commerce within this state;

(13) Label shall mean a display of written, printed, or graphic matter upon any article or the immediate container, not including package liners, of any article;

(14) Labeling shall mean all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers or (b) accompanying such article;

(15) License shall mean a license issued under the Nebraska Meat and Poultry Inspection Law by the director;

(16) Licensed establishment shall mean any of the establishments as defined in this section which are licensed under the terms of the Nebraska Meat and Poultry Inspection Law or pursuant to the terms of any other act administered by the director;

(17) Livestock shall mean any cattle, sheep, swine, goats, horses, mules, other equines, and other mammalian species as the director may determine, either living or dead;

(18) Livestock product shall mean any carcass, part thereof, meat, or meat food product of any livestock;

(19) Meat food product shall mean any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, except products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry and which are exempt from definition as a meat food product by the director under such conditions as the director may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines or other mammalian species as designated by the director shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats;

(20) Misbranded shall apply to any livestock product or poultry product under one or more of the following circumstances:



(a) If it fails to conform to the requirements established by the Nebraska Pure Food Act; or

(b) If it fails to bear directly thereon and on its containers, as the director may by rule and regulation prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the director may require in such rules and regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. Exemptions as to livestock products not in containers may be established by rules and regulations prescribed by the director and exemptions as to small packages may be established for livestock products or poultry products in the same manner;

(21) Mobile or remote processing unit shall mean any equipment for processing whole poultry by grinding, chopping, or other comparable method that is, or is intended to be, transported to or permanently located at locations away from a rendering establishment for purposes of collecting poultry carcasses processed for transport to a rendering establishment in liquid suspension;

(22) Official certificate shall mean any certificate prescribed by rules and regulations of the director for issuance by an inspector or other person performing official functions under the Nebraska Meat and Poultry Inspection Law;

(23) Official device shall mean any device prescribed or authorized by the director for use in applying any official mark;

(24) Official establishment shall mean any establishment as determined by the director at which antemortem and postmortem inspection of livestock or poultry or the inspection of the manufacturing of livestock products or poultry products for human consumption is maintained under the authority of the Nebraska Meat and Poultry Inspection Law;

(25) Official inspection legend shall mean any symbol prescribed by rules and regulations of the director showing that an article was inspected and passed in accordance with the Nebraska Meat and Poultry Inspection Law;

(26) Official mark shall mean the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article, livestock, or poultry under the Nebraska Meat and Poultry Inspection Law;

(27) Person shall include individuals, partnerships, limited liability companies, corporations, and associations and any officer, agent, partner, limited liability company member, or employee thereof;

(28) Pesticide chemical, food additive, color additive, and raw agricultural commodity shall have the same meanings for purposes of the Nebraska Meat and Poultry Inspection Law as under the Federal Food, Drug, and Cosmetic Act approved June 25, 1938, (52 Stat. 1040);

(29) Pet feed manufacturing shall mean the business of processing livestock or poultry or carcasses or parts thereof into small animal feed;

(30) Poultry shall mean any domesticated bird or other avian species as the director may designate, either living or dead;

(31) Poultry product shall mean any poultry carcass or part thereof or any product which is made wholly or in part from any poultry carcass or part

thereof, except products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry and which are exempt by the director from definition as a poultry product under such conditions as the director may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products;

(32) Prepared shall mean slaughtered, canned, salted, stuffed, rendered, boned, cut up, frozen, or otherwise manufactured or processed in any manner;

(33) Reinspection shall include inspection of the preparation of livestock products and poultry products, as well as reexamination of articles previously inspected;

(34) Rendering shall mean the business of processing livestock or poultry or carcasses or parts thereof not intended or capable for use as human food, including the processing of poultry carcasses into hydrolyzed whole poultry feed products; and

(35) Shipping container shall mean any container used or intended for use in packaging the product packed in an immediate container.

**Source:** Laws 1969, c. 449, § 2, p. 1502; Laws 1981, LB 487, § 42; Laws 1991, LB 358, § 5; Laws 1993, LB 121, § 346; Laws 1994, LB 884, § 73; Laws 1997, LB 199, § 2; Laws 2003, LB 160, § 12; Laws 2021, LB324, § 2.

Effective date August 28, 2021.

**Cross References**

Nebraska Pure Food Act, see section 81-2,239.

**54-1903 Intent of Nebraska Meat and Poultry Inspection Law.**

The intent of the Nebraska Meat and Poultry Inspection Law is to assure that only wholesome meat and poultry products enter regular commercial channels of commerce and to provide that same are identified and truthfully labeled. The director is designated as the administrator of the Nebraska Meat and Poultry Inspection Law and the department is designated as the administrative state agency.

**Source:** Laws 1969, c. 449, § 3, p. 1507; Laws 2021, LB324, § 3.  
Effective date August 28, 2021.

**54-1904 License; application; inspection; renewal; fee; suspension; when.**

It shall be unlawful for any person to operate or maintain any establishment unless first licensed by the department. A license may be obtained by application to the director upon forms prescribed by him or her for that purpose. The license shall authorize and restrict the licensee to the operation or operations requested in his or her application and approved by the director.

Application for a livestock establishment or a poultry establishment license shall be accompanied by a fee of fifty dollars for each establishment. A license application for a rendering establishment or for a pet feed establishment shall be accompanied by a fee of three hundred dollars for each establishment. Such fee shall be deposited in the state treasury and deposited in the Livestock Auction Market Fund.

No license shall be issued until an inspection of the facilities described in the license application is completed showing the proposed facilities to be in conformity with the Nebraska Meat and Poultry Inspection Law and the rules and regulations adopted and promulgated thereunder by the director.

Licenses shall be renewable annually on or before their expiration. No license shall be transferable with respect to licensee or location. The renewal fee shall be the same as the application fee for each license.

Each license shall by order be summarily suspended whenever an inspection reveals that conditions in any establishment constitute a menace to the public health and shall remain suspended until such conditions are corrected, subject to review by the department and courts as is provided for in the Nebraska Meat and Poultry Inspection Law.

In addition, the director may, upon ten days' notice in writing, suspend or revoke any license issued hereunder or refuse to renew the same for violation of any of the provisions of the Nebraska Meat and Poultry Inspection Law or any rule or regulation duly adopted and promulgated by the director. The notice shall specify in writing the charges relied on, and the hearings, disposition, and court review shall be as prescribed by the Nebraska Meat and Poultry Inspection Law.

**Source:** Laws 1969, c. 449, § 4, p. 1507; Laws 1982, LB 928, § 43; Laws 1983, LB 617, § 11; Laws 1988, LB 352, § 98; Laws 1997, LB 752, § 137; Laws 2016, LB909, § 9.

#### **54-1905 Hearings; how conducted; order; appeal.**

Hearings shall be conducted by the director who may administer oaths, rule upon offers of proof and objections, and take such other action as may be necessary.

The director shall not be bound by formal rules of evidence as observed in courts of law but shall exclude irrelevant, immaterial, or unduly repetitious evidence. The burden of proof and of proceeding with the evidence shall be on the department, and every party shall have the right to compulsory process, to representation by counsel of his or her own choosing, and to cross-examination of and confrontation by witnesses against him or her. The final determination of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 449, § 5, p. 1508; Laws 1988, LB 352, § 99.

#### **Cross References**

Administrative Procedure Act, see section 84-920.

#### **54-1906 Director of Agriculture; rules and regulations; adopt; requirements.**

The director shall promulgate and enforce such rules and regulations as are necessary to the proper administration and enforcement of the provisions of the Nebraska Meat and Poultry Inspection Law. Such rules and regulations shall require:

(1) Antemortem and postmortem inspection, quarantine, segregation, sanitation standards and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments licensed in this state, except those exempted by subdivision (9)

of section 54-1908, rendering establishments and pet feed manufacturing establishments;

(2) The identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, to clearly identify the products as inspected and passed if inspected and passed, or not for sale if not inspected, or condemned if they are found upon inspection to be adulterated. Condemned products shall be decharacterized or denatured or destroyed and shall not be sold or offered for sale as human food;

(3) Prohibition of entry into official establishments of livestock products and poultry products not prepared under federal inspection, or inspection pursuant to the Nebraska Meat and Poultry Inspection Law, and further limit the entry of such articles and other materials into such establishments under such conditions as he or she deems necessary to effectuate the purposes of the Nebraska Meat and Poultry Inspection Law;

(4) That when a livestock product, meat food product, poultry product, or poultry food product leaves an official establishment it shall conform to the requirements of the Nebraska Pure Food Act;

(5) Prior approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of the Nebraska Pure Food Act;

(6) That necessary facilities, equipment, identification practices, sanitary standards, inspections of materials and ingredients be used in the preparation of products at a rendering establishment or a pet feed establishment for the protection of the health and welfare of the citizens of this state and their pets, livestock, and poultry. Inspections as described in this subdivision shall be at the expense of the establishment operator receiving the service;

(7) That the conveyance or conveyances used by pet feed manufacturers, renderers, and motor carriers are so constructed as to be leak proof, insect tight, readily cleaned, and disinfected and kept in a sanitary condition;

(8) That any mobile or remote processing unit used by renderers be kept in sanitary condition, transported, and utilized in a manner as determined prudent by the department to minimize the risk of the spread of disease;

(9) That the products of hydrolyzed whole poultry processing be processed in such a manner as to be suitable for animal food, including heating by boiling at two hundred twelve degrees Fahrenheit at sea level for thirty minutes, dry extrusion at a minimum temperature of two hundred eighty-four degrees Fahrenheit for thirty seconds with a pressure differential of approximately forty atmospheres as the product exits the extruder, or their equivalents as approved by the department unless it is shown to the satisfaction of the department that heating is not required to render the product suitable for animal food; and

(10) Inspection of all operations traditionally and usually conducted at retail stores where meat, meat food products, poultry, and poultry food products are sold, consumed, held for sale or offered for sale, and in connection therewith, to cause such operations to be inspected to protect the consuming public from meat, poultry, meat food products, and poultry food products which may be

adulterated or misbranded by seizure or embargo of such products pursuant to the terms of section 54-1912.

**Source:** Laws 1969, c. 449, § 6, p. 1508; Laws 1981, LB 487, § 43; Laws 2003, LB 160, § 13.

**Cross References**

Nebraska Pure Food Act, see section 81-2,239.

**54-1907 Records; contents; access.**

The following classes of persons shall keep such records for such periods as are specified in regulations adopted by the director to fully and correctly disclose all transactions involved in their business, and shall afford to the director and his representatives access to such places of business, and opportunity, at all reasonable times, to examine the facilities, inventory and records thereof, to copy the records, and to secure samples or specimens of inventory after paying or offering to pay for such sample or specimen:

(1) Any persons who engage in or for intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, transporting, or storing any livestock products or poultry products for human food or animal feed; or

(2) Any persons who engage in or for intrastate commerce in the business of rendering, pet feed manufacturing, buying, selling, storing, or transporting any wholesome or dead, dying, disabled or diseased livestock or poultry, or parts of the carcasses of any such livestock or poultry which died either by slaughter or otherwise.

**Source:** Laws 1969, c. 449, § 7, p. 1510.

**54-1908 Director of Agriculture; powers.**

The director shall have the authority to:

(1) Remove inspection from any establishment that fails to abide by the Nebraska Meat and Poultry Inspection Law or any rule or regulation adopted and promulgated under such law;

(2) Refuse to provide inspection service under the Nebraska Meat and Poultry Inspection Law with respect to any establishment for causes specified in section 401 of the Federal Meat Inspection Act or section 18 of the federal Poultry Products Inspection Act;

(3) Order labeling and containers to be withheld from use if the director determines that the labeling is false or misleading or the containers are of a misleading size or form;

(4) Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared;

(5) Appoint as his or her agent and prescribe the duties of such inspectors and personnel, including employees of the United States Department of Agriculture, as he or she deems necessary for the efficient execution of the provisions of the Nebraska Meat and Poultry Inspection Law, except that inspection requested at times other than regularly scheduled inspection times shall be at the establishment operator's expense;

(6) Cooperate with the Secretary of Agriculture of the United States or with any governmental subdivision of this state in the administration of the Nebraska Meat and Poultry Inspection Law, and to accept federal assistance or assistance from any governmental subdivision of this state for that purpose, and to spend funds of this state appropriated for administration of the Nebraska Meat and Poultry Inspection Law, except that if the director enters into an agreement with the Secretary of Agriculture of the United States involving the acceptance of federal assistance and the utilization of both state and federal personnel, the salaries of state personnel involved in carrying out the enforcement of the Nebraska Meat and Poultry Inspection Law shall be comparable to those of their federal counterparts;

(7) Recommend to the Secretary of Agriculture of the United States for appointment to the advisory committees provided for in the federal acts, such officials or employees of the department as the director shall designate;

(8) Serve as the representative of the Governor for consultation with the secretary under paragraph (c) of section 301 of the Federal Meat Inspection Act and paragraph (c) of section 5 of the federal Poultry Products Inspection Act;

(9) Exempt the operations or any part of the operations at any establishment from inspection or other requirements of the Nebraska Meat and Poultry Inspection Law to the extent the director determines such operations are exempt under the Federal Meat Inspection Act or the federal Poultry Products Inspection Act when such exemption would not jeopardize the public health or welfare; or exempt from the inspection requirements of the Nebraska Meat and Poultry Inspection Law the slaughter of livestock and poultry, preparation of livestock products and poultry products at any establishment in Nebraska when the director determines that it is impractical to provide such inspection and that such exemption will otherwise facilitate enforcement of the Nebraska Meat and Poultry Inspection Law and not endanger the health and welfare of the people of this state. The director may refuse, withdraw, or modify any exemption under this subdivision whenever the director determines such action is necessary to effectuate the purposes of the Nebraska Meat and Poultry Inspection Law;

(10) Adopt and promulgate rules and regulations prescribing the sizes and style of type to be used for labeling information required under the Nebraska Meat and Poultry Inspection Law, and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when the director deems such action appropriate for the protection of the health and welfare of the public;

(11) Adopt and promulgate rules and regulations prescribing conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such articles in or for intrastate commerce as brokers, wholesalers, common carriers, or otherwise to assure that such articles will not be adulterated or misbranded when delivered to the consumer;

(12) Adopt and promulgate rules and regulations as the director deems necessary prescribing sanitation, antemortem inspection, postmortem inspection, labeling requirements, and facility requirements for the slaughtering and preparation of horses, mules, and other equines and other species in all establishments; and

(13) Adopt and promulgate rules and regulations as the director deems necessary for the efficient execution of the provisions of the Nebraska Meat and Poultry Inspection Law, including rules of practice providing opportunity for hearing in connection with issuance of orders under section 54-1905 and prescribing procedure for proceedings in such cases.

**Source:** Laws 1969, c. 449, § 8, p. 1510; Laws 2021, LB324, § 4.  
Effective date August 28, 2021.

#### **54-1909 Unlawful acts.**

It shall be unlawful for any person to:

(1) Slaughter any livestock or poultry or prepare any livestock products or poultry products which are capable of use as human food, at any establishment, without first obtaining a license from the director and then only when slaughter or preparation is done in compliance with the requirements of the Nebraska Meat and Poultry Inspection Law and rules and regulations adopted and promulgated by the director;

(2) Engage in rendering or pet feed manufacturing without first obtaining a license from the director and then only when such activity is in compliance with the requirements of the Nebraska Meat and Poultry Inspection Law and rules and regulations adopted and promulgated by the director;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any such articles which (a) are capable of use as human food and (b) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or any articles required to be inspected under the Nebraska Meat and Poultry Inspection Law unless they have been so inspected and passed;

(4) Slaughter livestock or poultry for regular commercial channels of commerce unless subjected to antemortem and postmortem inspection, or to sell, offer for sale, expose for sale or have in possession for the purpose of sale, or transport or receive for transportation any livestock product or poultry product capable of use as human food which was slaughtered without antemortem and postmortem inspection and which fails to bear the marks of identification as required by the Nebraska Meat and Poultry Inspection Law and rules and regulations adopted and promulgated under such law. The possession of any quantity of livestock product or poultry product in an amount greater than meets the reasonable consumption of the owner thereof, including all members of such person's immediate household and nonpaying guests, shall be prima facie evidence of intent to sell the same contrary to the Nebraska Meat and Poultry Inspection Law;

(5) With respect to any such articles which are capable of use as human food, do any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded;

(6) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from any establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with rules and regulations adopted and promulgated by the director, except as may be authorized by such rules and regulations;

(7) Fail to mark or identify any livestock or poultry, part or product of such carcass as required by the Nebraska Meat and Poultry Inspection Law or rules and regulations adopted and promulgated under such law;

(8) Violate any provision of the rules, regulations, or orders of the director entered pursuant to section 54-1904 or 54-1905 or rules and regulations adopted and promulgated pursuant to section 54-1906 or 54-1908;

(9) Cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation thereof, except as authorized by the director;

(10) Forge any official device, mark, or certificate or without authorization from the director use any official device, mark, or certificate, or simulation thereof, or alter, detach, remove, deface, or destroy any official device, mark, or certificate required pursuant to the terms of the Nebraska Meat and Poultry Inspection Law and rules and regulations adopted and promulgated by the director;

(11) Knowingly possess, without promptly notifying the director or the director's representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, including poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark, or knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the rules and regulations adopted and promulgated by the director; or knowingly represent that any article has been inspected and passed, or exempted, under the Nebraska Meat and Poultry Inspection Law when in fact it has not been so inspected and passed or exempted;

(12) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by rules and regulations prescribed by the director to show the kinds of animals from which they were derived;

(13) Buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products, or dead, dying, disabled, or diseased livestock or poultry which are not intended for use as human food unless they are denatured or otherwise identified or decharacterized as required by the rules and regulations of the director so as to prevent them from being used for human food purposes;

(14) Give, pay, or offer, directly or indirectly, to any officer or employee of this state authorized to perform any of the duties prescribed by the Nebraska Meat and Poultry Inspection Law or by the rules and regulations of the director, any money or other thing of value, with intent to influence such officer or employee in the discharge of any such duty;

(15) Neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in such person's power to do so, in obedience to the subpoena or lawful requirement of the director; or

(16) Willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under the Nebraska Meat and Poultry Inspection Law or rules and regulations adopted and promulgated under such



law, or willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person subject to the Nebraska Meat and Poultry Inspection Law or willfully neglect or fail to make or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person or that shall willfully remove out of the jurisdiction of this state, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any person subject to the Nebraska Meat and Poultry Inspection Law or to willfully refuse to submit to the director or to any of the director's authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to the Nebraska Meat and Poultry Inspection Law in such person's possession or within such person's control; or for any inspector to make public any information obtained by the director, under the authority granted by the Nebraska Meat and Poultry Inspection Law, without first securing the director's authority to do so, unless directed by a court to divulge such information.

**Source:** Laws 1969, c. 449, § 9, p. 1513; Laws 2021, LB324, § 5.  
Effective date August 28, 2021.

**54-1910 Inspection of products; when completed.**

No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed therein under the supervision of an inspector.

**Source:** Laws 1969, c. 499, § 10, p. 1516.

**54-1911 Exempted product; adulterated or misbranded; seized by inspector; when.**

Whenever any livestock product or poultry product or any product exempted from the definition of a livestock product and from the definition of a poultry product, or any dead, dying, disabled, or diseased livestock or poultry, is found by any authorized representative of the director upon any premises where it is held for purposes of distribution, or during or after distribution, in intrastate commerce or is otherwise subject to the Nebraska Meat and Poultry Inspection Law, and the authorized representative or inspector has reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected and fails to bear an official mark or is otherwise in violation of the Nebraska Meat and Poultry Inspection Law or of the federal acts or the Nebraska Pure Food Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be seized and embargoed by such representative or inspector for a period not to exceed twenty days, pending action under section 54-1912 or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person from the place at which it is located when so seized or embargoed until released by an inspector or representative of the department or by an order of a court having jurisdiction. All official marks may be required by such representative or inspector to be removed from such article or animal before it is released unless it appears to the satisfaction of the director that the article or animal is eligible to retain such mark or marks.

**Source:** Laws 1969, c. 449, § 11, p. 1516; Laws 1981, LB 487, § 44; Laws 2021, LB324, § 6.  
Effective date August 28, 2021.

Nebraska Pure Food Act, see section 81-2,239.

**54-1912 Product found adulterated or misbranded; seizure; destruction; procedure.**

Any livestock product or poultry product or any dead, dying, disabled, or diseased livestock or poultry that is being transported in intrastate commerce or is otherwise subject to the Nebraska Meat and Poultry Inspection Law, or is held for sale in this state after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of the Nebraska Meat and Poultry Inspection Law or any rules or regulations duly adopted and promulgated under such law, (2) is capable of use as a human food and found to be adulterated or misbranded, or (3) in any other way is in violation of the Nebraska Meat and Poultry Inspection Law, shall be seized and embargoed.

Upon receiving written permission from the owner or claimant, all articles, animals, or poultry under seizure or embargo shall be destroyed at the expense of the owner or claimant. When permission for destruction cannot be obtained, the director shall petition a judge of the district court in whose jurisdiction the article, animal, or poultry is seized or embargoed for a condemnation of such article, animal, or poultry. If the court finds that the seized or embargoed article, animal, or poultry is adulterated or misbranded, it shall, after entry of the decree, be destroyed at the expense of the claimant or owner thereof, under the supervision of the director or an inspector, and all court costs and fees and storage and other proper expenses shall be taxed against the owner or claimant or such owner's or claimant's agent, except that when the adulteration or misbranding can be corrected by proper labeling or further processing of the article of livestock or poultry, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned that such article of livestock or poultry shall be so labeled or further processed, may by order direct that such article of livestock or poultry be delivered to the claimant thereof for labeling or further processing under the supervision of an inspector. The expense of such supervision may be assessed against the claimant. The article of livestock or poultry shall be returned to the claimant on the representation to the court by the director that it is no longer in violation of the Nebraska Meat and Poultry Inspection Law, the Nebraska Pure Food Act, or of any federal act or acts, and that the expenses of such supervision have been paid. In the case of mislabeled or misbranded articles of livestock or poultry which are abandoned by the owner and for which no claimant appears, the same may be sold by the director or the director's agent and the proceeds of the sale shall be paid to the State Treasurer to be placed in the General Fund. No article, poultry, or livestock shall be sold contrary to the Nebraska Meat and Poultry Inspection Law, the Nebraska Pure Food Act, the Wholesome Meat Act, or the Wholesome Poultry Products Act.

The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of the Nebraska Meat and Poultry Inspection Law or other laws. The district courts of this state are vested with jurisdiction specifically to enforce and to prevent and restrain violations of the Nebraska Meat and Poultry Inspection Law and shall have

jurisdiction in all other kinds of cases arising under the Nebraska Meat and Poultry Inspection Law except as otherwise provided under such law.

**Source:** Laws 1969, c. 449, § 12, p. 1517; Laws 1981, LB 487, § 45; Laws 2021, LB324, § 7.

Effective date August 28, 2021.

**Cross References**

Nebraska Pure Food Act, see section 81-2,239.

**54-1913 Officer, inspector, employee of state; bribes, acceptances; interference; penalty.**

(1) Any officer, inspector, or employee of this state authorized to perform any of the duties prescribed by the Nebraska Meat and Poultry Inspection Law who shall accept any money, gift, or other thing of value from any person given with intent to influence his or her official action, or who shall receive or accept from any person engaged in intrastate commerce subject to the Nebraska Meat and Poultry Inspection Law any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a Class III misdemeanor and shall be summarily discharged from office.

(2) Any person who forcibly assaults, resists, opposes, impedes, intimidates, bribes or attempts to bribe, or interferes with any inspector or employee while engaged in or on account of the performance of his or her official duties under the Nebraska Meat and Poultry Inspection Law, shall be deemed guilty of a Class II misdemeanor.

(3) Any person who violates any provisions of the Nebraska Meat and Poultry Inspection Law or any rules and regulations duly adopted and promulgated under such law, for which no other criminal penalty is provided by the Nebraska Meat and Poultry Inspection Law, shall be deemed guilty of a Class II misdemeanor, but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated, such person shall be guilty of a Class IV felony.

**Source:** Laws 1969, c. 449, § 13, p. 1518; Laws 1977, LB 39, § 49; Laws 2021, LB324, § 8.

Effective date August 28, 2021.

**54-1914 Director of Agriculture; violations; investigations; powers; subpoenas.**

The director shall have the following additional powers:

(1) Whenever he or she has reason to believe that any licensee may be in possession of information relevant to an investigation by him or her of suspected violations of the provisions of the Nebraska Meat and Poultry Inspection Law or regulations promulgated thereunder, the director may require such person to file with him or her in such form as he or she may prescribe special reports or answers in writing to specific questions, furnishing such information. Such reports and answers shall be made under oath and shall be filed with the director within such reasonable period as the director may prescribe, unless additional time is granted in any case upon prompt application for same.

(2) To have access to all establishments, including any premises where a mobile or remote processing unit is located or utilized, for the purposes of examination or inspection or both at all times and the right to copy any

documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person or the taking of a deposition relating to any matter under his or her investigation. The director may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence in accordance with the provisions of section 54-1905. In case of disobedience to a subpoena, the director may invoke the aid of the district court of Lancaster County in requiring the attendance and testimony of witnesses and the production of documentary evidence. If any person fails to obey an order of the court, he or she may be punished by the court as for contempt thereof. Witnesses summoned or required to give depositions shall be paid the same fees that are paid witnesses in the district courts of this state and mileage at the same rate provided in section 81-1176 for state employees.

No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the director or in obedience to the subpoena of the director, whether such subpoena be signed or issued by the director or his or her delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the Nebraska Meat and Poultry Inspection Law, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture; but no individual shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

**Source:** Laws 1969, c. 449, § 14, p. 1519; Laws 1981, LB 204, § 96; Laws 2003, LB 160, § 14.

**54-1915 Director of Agriculture; cooperate with United States Department of Agriculture.**

The director is hereby authorized to cooperate with the United States Department of Agriculture for the exchange and cross certification of employees or inspectors to implement the Nebraska Meat and Poultry Inspection Law.

**Source:** Laws 1969, c. 449, § 15, p. 1520; Laws 2021, LB324, § 9.  
Effective date August 28, 2021.

**54-1915.01 Acquisition of meat from livestock by an informed end consumer; allowed; conditions.**

(1) The acquisition of meat from livestock by an informed end consumer shall not constitute the sale of meat products in contravention of the Nebraska Meat and Poultry Inspection Law and shall not be prohibited if all of the following conditions are met:

- (a) The meat is made available pursuant to an animal share and is:
  - (i) Received by or on behalf of an owner of an animal share; and
  - (ii) Obtained from the particular livestock subject to the animal share;

(b) Ownership of the particular livestock is established by contract prior to slaughter;

(c) The name and address of each individual with an ownership interest in the particular livestock is presented to the processor prior to slaughter; and

(d) Information describing the standards used by the farm or ranch with respect to livestock health and in the processing of meat from the livestock is provided to the informed end consumer by the farmer or rancher.

(2) A farmer or rancher that sells an animal share shall:

(a) Be a resident of the State of Nebraska; and

(b) Maintain a record of each animal share sold under this section.

(3) No person who obtains meat in accordance with this section shall sell, donate, or commercially redistribute the meat in any way. No farmer or rancher shall publish any statement that implies the department's approval or endorsement of meat made available pursuant to an animal share. The requirement for a license under section 54-1904 or for inspection under the Nebraska Meat and Poultry Inspection Law shall not apply to the sale of meat products pursuant to this section.

**Source:** Laws 2021, LB324, § 10.

Effective date August 28, 2021.

**54-1915.02 Independent Processor Assistance Program; created; purpose; department; powers and duties.**

(1) The Independent Processor Assistance Program is created. The department shall administer the program contingent on funds being made available for such purpose.

(2) The purpose of the Independent Processor Assistance Program is to:

(a) Address supply chain disruptions caused by a public health emergency;

(b) Increase and improve livestock slaughter and meat processing capacity;

(c) Expand market access for small livestock producers; and

(d) Facilitate workforce development.

(3) In administering the Independent Processor Assistance Program, the department may develop policies and procedures for the disbursement of funds authorized by this section that include, at a minimum, the following:

(a) Applicant eligibility standards. At a minimum, such standards shall require that eligible applicants:

(i) Operate as a federally inspected, state-inspected, or custom-exempt slaughter and processing facility domiciled in Nebraska;

(ii) Demonstrate existing sales revenue of less than two million five hundred thousand dollars and employment of fewer than twenty-five employees; and

(iii) Be registered in good standing with the Secretary of State to do business in Nebraska; and

(b) Expense eligibility standards. At a minimum, such standards shall include:

(i) Capital improvements to expand capacity, including expansion and modifications to existing buildings or construction of new buildings at existing facilities;

- (ii) Upgrades to utilities, including water, electric, heat, refrigeration, freezing, and waste facilities;
  - (iii) Livestock intake and storage equipment;
  - (iv) Processing and manufacturing equipment, including cutting equipment, mixers, grinders, sausage stuffers, smokers, curing equipment, pipes, motors, pumps, and valves;
  - (v) Packaging and handling equipment, including sealing, bagging, boxing, labeling, conveying, and product-moving equipment;
  - (vi) Warehouse equipment, including storage and curing racks;
  - (vii) Waste treatment and management equipment, including tanks, blowers, separators, dryers, digesters, and equipment that uses waste to produce energy, fuel, or industrial products;
  - (viii) Technology that allows increased capacity or business resilience, including software and hardware related to business functions, logistics, inventory management, plant production controls, temperature monitoring controls, and website design that enables e-commerce;
  - (ix) Rental of buildings, facilities, or equipment necessary to expand capacity, including mobile slaughter units and mobile refrigeration units used exclusively for meat or poultry processing;
  - (x) Costs associated with increased inspections or becoming inspected, including overtime inspection services by the Food Safety and Inspection Service of the United States Department of Agriculture and hazard analysis and critical control point consultation services; and
  - (xi) Educational and workforce training provided either by the facility or by an institution of higher education.
- (4) The department may adopt and promulgate rules and regulations to carry out the purposes of the Independent Processor Assistance Program.

**Source:** Laws 2021, LB324, § 11.  
Effective date August 28, 2021.

(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

**54-1916 Repealed. Laws 2012, LB 782, § 253.**

**ARTICLE 20**

**NEBRASKA LIVESTOCK MARKET ACT**

Section	
54-2001.	Repealed. Laws 2001, LB 197, § 26.
54-2002.	Repealed. Laws 2001, LB 197, § 26.
54-2003.	Repealed. Laws 2001, LB 197, § 26.
54-2004.	Repealed. Laws 2001, LB 197, § 26.
54-2005.	Repealed. Laws 2001, LB 197, § 26.
54-2006.	Repealed. Laws 2001, LB 197, § 26.
54-2007.	Repealed. Laws 2001, LB 197, § 26.
54-2008.	Repealed. Laws 2001, LB 197, § 26.
54-2009.	Repealed. Laws 2001, LB 197, § 26.
54-2010.	Repealed. Laws 2001, LB 197, § 26.
54-2011.	Repealed. Laws 2001, LB 197, § 26.
54-2012.	Repealed. Laws 2001, LB 197, § 26.
54-2013.	Repealed. Laws 2001, LB 197, § 26.

## Section

- 54-2014. Repealed. Laws 2001, LB 197, § 26.  
 54-2015. Repealed. Laws 2001, LB 197, § 26.  
 54-2016. Repealed. Laws 2001, LB 197, § 26.  
 54-2017. Repealed. Laws 2001, LB 197, § 26.  
 54-2018. Repealed. Laws 2001, LB 197, § 26.  
 54-2019. Repealed. Laws 2001, LB 197, § 26.

**54-2001 Repealed. Laws 2001, LB 197, § 26.**

**54-2002 Repealed. Laws 2001, LB 197, § 26.**

**54-2003 Repealed. Laws 2001, LB 197, § 26.**

**54-2004 Repealed. Laws 2001, LB 197, § 26.**

**54-2005 Repealed. Laws 2001, LB 197, § 26.**

**54-2006 Repealed. Laws 2001, LB 197, § 26.**

**54-2007 Repealed. Laws 2001, LB 197, § 26.**

**54-2008 Repealed. Laws 2001, LB 197, § 26.**

**54-2009 Repealed. Laws 2001, LB 197, § 26.**

**54-2010 Repealed. Laws 2001, LB 197, § 26.**

**54-2011 Repealed. Laws 2001, LB 197, § 26.**

**54-2012 Repealed. Laws 2001, LB 197, § 26.**

**54-2013 Repealed. Laws 2001, LB 197, § 26.**

**54-2014 Repealed. Laws 2001, LB 197, § 26.**

**54-2015 Repealed. Laws 2001, LB 197, § 26.**

**54-2016 Repealed. Laws 2001, LB 197, § 26.**

**54-2017 Repealed. Laws 2001, LB 197, § 26.**

**54-2018 Repealed. Laws 2001, LB 197, § 26.**

**54-2019 Repealed. Laws 2001, LB 197, § 26.**

## ARTICLE 21

### BEEF INDUSTRY DEVELOPMENT

## Section

- 54-2101. Repealed. Laws 1991, LB 583, § 12.  
 54-2102. Repealed. Laws 1991, LB 583, § 12.  
 54-2103. Repealed. Laws 1991, LB 583, § 12.  
 54-2104. Repealed. Laws 1991, LB 583, § 12.  
 54-2105. Repealed. Laws 1991, LB 583, § 12.  
 54-2106. Repealed. Laws 1991, LB 583, § 12.  
 54-2107. Repealed. Laws 1991, LB 583, § 12.  
 54-2108. Repealed. Laws 1991, LB 583, § 12.  
 54-2109. Repealed. Laws 1991, LB 583, § 12.  
 54-2110. Repealed. Laws 1991, LB 583, § 12.

§ 54-2101

LIVESTOCK

Section

54-2111. Repealed. Laws 1991, LB 583, § 12.  
54-2112. Repealed. Laws 1991, LB 583, § 12.  
54-2112.01. Repealed. Laws 1991, LB 583, § 12.  
54-2113. Repealed. Laws 1991, LB 583, § 12.  
54-2114. Repealed. Laws 1991, LB 583, § 12.  
54-2115. Repealed. Laws 1991, LB 583, § 12.  
54-2116. Repealed. Laws 1991, LB 583, § 12.  
54-2117. Repealed. Laws 1991, LB 583, § 12.  
54-2118. Repealed. Laws 1991, LB 583, § 12.  
54-2119. Repealed. Laws 1991, LB 583, § 12.  
54-2120. Repealed. Laws 1995, LB 11, § 1.  
54-2121. Repealed. Laws 1995, LB 11, § 1.  
54-2122. Repealed. Laws 1995, LB 11, § 1.  
54-2123. Repealed. Laws 1995, LB 11, § 1.  
54-2124. Repealed. Laws 1995, LB 11, § 1.  
54-2125. Repealed. Laws 1995, LB 11, § 1.  
54-2126. Repealed. Laws 1995, LB 11, § 1.

**54-2101 Repealed. Laws 1991, LB 583, § 12.**

**54-2102 Repealed. Laws 1991, LB 583, § 12.**

**54-2103 Repealed. Laws 1991, LB 583, § 12.**

**54-2104 Repealed. Laws 1991, LB 583, § 12.**

**54-2105 Repealed. Laws 1991, LB 583, § 12.**

**54-2106 Repealed. Laws 1991, LB 583, § 12.**

**54-2107 Repealed. Laws 1991, LB 583, § 12.**

**54-2108 Repealed. Laws 1991, LB 583, § 12.**

**54-2109 Repealed. Laws 1991, LB 583, § 12.**

**54-2110 Repealed. Laws 1991, LB 583, § 12.**

**54-2111 Repealed. Laws 1991, LB 583, § 12.**

**54-2112 Repealed. Laws 1991, LB 583, § 12.**

**54-2112.01 Repealed. Laws 1991, LB 583, § 12.**

**54-2113 Repealed. Laws 1991, LB 583, § 12.**

**54-2114 Repealed. Laws 1991, LB 583, § 12.**

**54-2115 Repealed. Laws 1991, LB 583, § 12.**

**54-2116 Repealed. Laws 1991, LB 583, § 12.**

**54-2117 Repealed. Laws 1991, LB 583, § 12.**

**54-2118 Repealed. Laws 1991, LB 583, § 12.**

**54-2119 Repealed. Laws 1991, LB 583, § 12.**

**54-2120 Repealed. Laws 1995, LB 11, § 1.**

**54-2121 Repealed. Laws 1995, LB 11, § 1.**



**54-2122 Repealed. Laws 1995, LB 11, § 1.**

**54-2123 Repealed. Laws 1995, LB 11, § 1.**

**54-2124 Repealed. Laws 1995, LB 11, § 1.**

**54-2125 Repealed. Laws 1995, LB 11, § 1.**

**54-2126 Repealed. Laws 1995, LB 11, § 1.**

## ARTICLE 22 PSEUDORABIES

Section	
54-2201.	Transferred to section 54-2235.
54-2202.	Transferred to section 54-2237.
54-2203.	Transferred to section 54-2259.
54-2204.	Repealed. Laws 1991, LB 359, § 67.
54-2205.	Transferred to section 54-2252.
54-2206.	Transferred to section 54-2247.
54-2207.	Repealed. Laws 1990, LB 1004, § 48.
54-2208.	Transferred to section 54-2254.
54-2208.01.	Transferred to section 54-2242.
54-2208.02.	Transferred to section 54-2244.
54-2208.03.	Transferred to section 54-2245.
54-2208.04.	Repealed. Laws 1991, LB 359, § 67.
54-2208.05.	Repealed. Laws 1991, LB 359, § 67.
54-2208.06.	Transferred to section 54-2264.
54-2209.	Transferred to section 54-2246.
54-2210.	Transferred to section 54-2256.
54-2211.	Repealed. Laws 1991, LB 359, § 67.
54-2212.	Transferred to section 54-2262.
54-2213.	Transferred to section 54-2253.
54-2214.	Transferred to section 54-2255.
54-2215.	Transferred to section 54-2265.
54-2216.	Transferred to section 54-2248.
54-2217.	Transferred to section 54-2251.
54-2218.	Transferred to section 54-2250.
54-2218.01.	Transferred to section 54-2239.
54-2218.02.	Repealed. Laws 1991, LB 359, § 67.
54-2219.	Transferred to section 54-2243.
54-2220.	Transferred to section 54-2249.
54-2220.01.	Repealed. Laws 1991, LB 359, § 67.
54-2220.02.	Transferred to section 54-2257.
54-2220.03.	Transferred to section 54-2258.
54-2220.04.	Repealed. Laws 1991, LB 359, § 67.
54-2221.	Transferred to section 54-2270.
54-2221.01.	Repealed. Laws 1990, LB 1004, § 48.
54-2221.02.	Repealed. Laws 1991, LB 359, § 67.
54-2221.03.	Repealed. Laws 1991, LB 359, § 67.
54-2221.04.	Transferred to section 54-2277.
54-2221.05.	Transferred to section 54-2278.
54-2221.06.	Repealed. Laws 1991, LB 359, § 67.
54-2221.07.	Transferred to section 54-2280.
54-2221.08.	Repealed. Laws 1991, LB 359, § 67.
54-2221.09.	Transferred to section 54-2281.
54-2221.10.	Transferred to section 54-2282.
54-2221.11.	Transferred to section 54-2283.
54-2221.12.	Transferred to section 54-2284.
54-2221.13.	Transferred to section 54-2285.
54-2221.14.	Transferred to section 54-2286.

## LIVESTOCK

Section	
54-2222.	Transferred to section 54-2287.
54-2223.	Transferred to section 54-2288.
54-2223.01.	Transferred to section 54-2236.
54-2223.02.	Repealed. Laws 1991, LB 359, § 67.
54-2223.03.	Transferred to section 54-2271.
54-2224.	Transferred to section 54-2289.
54-2225.	Transferred to section 54-2290.
54-2226.	Transferred to section 54-2291.
54-2227.	Transferred to section 54-2292.
54-2228.	Transferred to section 54-2293.
54-2229.	Transferred to section 54-2294.
54-2230.	Repealed. Laws 1991, LB 359, § 67.
54-2231.	Repealed. Laws 1991, LB 359, § 67.
54-2231.01.	Repealed. Laws 1991, LB 359, § 67.
54-2232.	Repealed. Laws 1991, LB 359, § 67.
54-2233.	Transferred to section 54-2298.
54-2234.	Transferred to section 54-22,100.
54-2235.	Repealed. Laws 2020, LB344, § 82.
54-2236.	Repealed. Laws 2020, LB344, § 82.
54-2237.	Repealed. Laws 2020, LB344, § 82.
54-2238.	Repealed. Laws 2020, LB344, § 82.
54-2239.	Repealed. Laws 2020, LB344, § 82.
54-2240.	Repealed. Laws 2020, LB344, § 82.
54-2241.	Repealed. Laws 2020, LB344, § 82.
54-2242.	Repealed. Laws 2020, LB344, § 82.
54-2243.	Repealed. Laws 2020, LB344, § 82.
54-2244.	Repealed. Laws 2020, LB344, § 82.
54-2245.	Repealed. Laws 2020, LB344, § 82.
54-2246.	Repealed. Laws 2020, LB344, § 82.
54-2247.	Repealed. Laws 2020, LB344, § 82.
54-2248.	Repealed. Laws 2020, LB344, § 82.
54-2249.	Repealed. Laws 2020, LB344, § 82.
54-2250.	Repealed. Laws 2020, LB344, § 82.
54-2251.	Repealed. Laws 2020, LB344, § 82.
54-2252.	Repealed. Laws 2020, LB344, § 82.
54-2253.	Repealed. Laws 2020, LB344, § 82.
54-2254.	Repealed. Laws 2020, LB344, § 82.
54-2255.	Repealed. Laws 2020, LB344, § 82.
54-2256.	Repealed. Laws 2020, LB344, § 82.
54-2257.	Repealed. Laws 2020, LB344, § 82.
54-2258.	Repealed. Laws 2020, LB344, § 82.
54-2259.	Repealed. Laws 2020, LB344, § 82.
54-2260.	Repealed. Laws 2020, LB344, § 82.
54-2261.	Repealed. Laws 2003, LB 158, § 74.
54-2262.	Repealed. Laws 2020, LB344, § 82.
54-2262.01.	Repealed. Laws 2020, LB344, § 82.
54-2263.	Repealed. Laws 2020, LB344, § 82.
54-2264.	Repealed. Laws 2020, LB344, § 82.
54-2265.	Repealed. Laws 2020, LB344, § 82.
54-2266.	Repealed. Laws 2020, LB344, § 82.
54-2267.	Repealed. Laws 2020, LB344, § 82.
54-2268.	Repealed. Laws 2020, LB344, § 82.
54-2269.	Repealed. Laws 2020, LB344, § 82.
54-2270.	Repealed. Laws 2020, LB344, § 82.
54-2271.	Repealed. Laws 2020, LB344, § 82.
54-2272.	Repealed. Laws 1996, LB 965, § 18.
54-2273.	Repealed. Laws 1996, LB 965, § 18.
54-2274.	Repealed. Laws 1996, LB 965, § 18.
54-2275.	Repealed. Laws 1996, LB 965, § 18.
54-2276.	Repealed. Laws 2020, LB344, § 82.
54-2277.	Repealed. Laws 2020, LB344, § 82.

Section	
54-2278.	Repealed. Laws 2020, LB344, § 82.
54-2279.	Repealed. Laws 2020, LB344, § 82.
54-2280.	Repealed. Laws 2020, LB344, § 82.
54-2281.	Repealed. Laws 2020, LB344, § 82.
54-2282.	Repealed. Laws 2003, LB 158, § 74.
54-2283.	Repealed. Laws 2020, LB344, § 82.
54-2284.	Repealed. Laws 2003, LB 158, § 74.
54-2285.	Repealed. Laws 2003, LB 158, § 74.
54-2286.	Repealed. Laws 2020, LB344, § 82.
54-2287.	Repealed. Laws 2020, LB344, § 82.
54-2288.	Repealed. Laws 2020, LB344, § 82.
54-2289.	Repealed. Laws 2020, LB344, § 82.
54-2290.	Repealed. Laws 2020, LB344, § 82.
54-2291.	Repealed. Laws 2020, LB344, § 82.
54-2292.	Repealed. Laws 2020, LB344, § 82.
54-2293.	Pseudorabies Control Cash Fund; use; investment; termination.
54-2294.	Repealed. Laws 2020, LB344, § 82.
54-2295.	Repealed. Laws 2020, LB344, § 82.
54-2296.	Repealed. Laws 2020, LB344, § 82.
54-2297.	Repealed. Laws 2020, LB344, § 82.
54-2298.	Repealed. Laws 2020, LB344, § 82.
54-2299.	Repealed. Laws 2020, LB344, § 82.
54-22,100.	Repealed. Laws 2020, LB344, § 82.

**54-2201 Transferred to section 54-2235.**

**54-2202 Transferred to section 54-2237.**

**54-2203 Transferred to section 54-2259.**

**54-2204 Repealed. Laws 1991, LB 359, § 67.**

**54-2205 Transferred to section 54-2252.**

**54-2206 Transferred to section 54-2247.**

**54-2207 Repealed. Laws 1990, LB 1004, § 48.**

**54-2208 Transferred to section 54-2254.**

**54-2208.01 Transferred to section 54-2242.**

**54-2208.02 Transferred to section 54-2244.**

**54-2208.03 Transferred to section 54-2245.**

**54-2208.04 Repealed. Laws 1991, LB 359, § 67.**

**54-2208.05 Repealed. Laws 1991, LB 359, § 67.**

**54-2208.06 Transferred to section 54-2264.**

**54-2209 Transferred to section 54-2246.**

**54-2210 Transferred to section 54-2256.**

**54-2211 Repealed. Laws 1991, LB 359, § 67.**

**54-2212 Transferred to section 54-2262.**

**54-2213 Transferred to section 54-2253.**

- 54-2214 Transferred to section 54-2255.
- 54-2215 Transferred to section 54-2265.
- 54-2216 Transferred to section 54-2248.
- 54-2217 Transferred to section 54-2251.
- 54-2218 Transferred to section 54-2250.
- 54-2218.01 Transferred to section 54-2239.
- 54-2218.02 Repealed. Laws 1991, LB 359, § 67.
- 54-2219 Transferred to section 54-2243.
- 54-2220 Transferred to section 54-2249.
- 54-2220.01 Repealed. Laws 1991, LB 359, § 67.
- 54-2220.02 Transferred to section 54-2257.
- 54-2220.03 Transferred to section 54-2258.
- 54-2220.04 Repealed. Laws 1991, LB 359, § 67.
- 54-2221 Transferred to section 54-2270.
- 54-2221.01 Repealed. Laws 1990, LB 1004, § 48.
- 54-2221.02 Repealed. Laws 1991, LB 359, § 67.
- 54-2221.03 Repealed. Laws 1991, LB 359, § 67.
- 54-2221.04 Transferred to section 54-2277.
- 54-2221.05 Transferred to section 54-2278.
- 54-2221.06 Repealed. Laws 1991, LB 359, § 67.
- 54-2221.07 Transferred to section 54-2280.
- 54-2221.08 Repealed. Laws 1991, LB 359, § 67.
- 54-2221.09 Transferred to section 54-2281.
- 54-2221.10 Transferred to section 54-2282.
- 54-2221.11 Transferred to section 54-2283.
- 54-2221.12 Transferred to section 54-2284.
- 54-2221.13 Transferred to section 54-2285.
- 54-2221.14 Transferred to section 54-2286.
- 54-2222 Transferred to section 54-2287.
- 54-2223 Transferred to section 54-2288.
- 54-2223.01 Transferred to section 54-2236.

- 54-2223.02 Repealed. Laws 1991, LB 359, § 67.
- 54-2223.03 Transferred to section 54-2271.
- 54-2224 Transferred to section 54-2289.
- 54-2225 Transferred to section 54-2290.
- 54-2226 Transferred to section 54-2291.
- 54-2227 Transferred to section 54-2292.
- 54-2228 Transferred to section 54-2293.
- 54-2229 Transferred to section 54-2294.
- 54-2230 Repealed. Laws 1991, LB 359, § 67.
- 54-2231 Repealed. Laws 1991, LB 359, § 67.
- 54-2231.01 Repealed. Laws 1991, LB 359, § 67.
- 54-2232 Repealed. Laws 1991, LB 359, § 67.
- 54-2233 Transferred to section 54-2298.
- 54-2234 Transferred to section 54-22,100.
- 54-2235 Repealed. Laws 2020, LB344, § 82.
- 54-2236 Repealed. Laws 2020, LB344, § 82.
- 54-2237 Repealed. Laws 2020, LB344, § 82.
- 54-2238 Repealed. Laws 2020, LB344, § 82.
- 54-2239 Repealed. Laws 2020, LB344, § 82.
- 54-2240 Repealed. Laws 2020, LB344, § 82.
- 54-2241 Repealed. Laws 2020, LB344, § 82.
- 54-2242 Repealed. Laws 2020, LB344, § 82.
- 54-2243 Repealed. Laws 2020, LB344, § 82.
- 54-2244 Repealed. Laws 2020, LB344, § 82.
- 54-2245 Repealed. Laws 2020, LB344, § 82.
- 54-2246 Repealed. Laws 2020, LB344, § 82.
- 54-2247 Repealed. Laws 2020, LB344, § 82.
- 54-2248 Repealed. Laws 2020, LB344, § 82.
- 54-2249 Repealed. Laws 2020, LB344, § 82.
- 54-2250 Repealed. Laws 2020, LB344, § 82.
- 54-2251 Repealed. Laws 2020, LB344, § 82.

- 54-2252 Repealed. Laws 2020, LB344, § 82.
- 54-2253 Repealed. Laws 2020, LB344, § 82.
- 54-2254 Repealed. Laws 2020, LB344, § 82.
- 54-2255 Repealed. Laws 2020, LB344, § 82.
- 54-2256 Repealed. Laws 2020, LB344, § 82.
- 54-2257 Repealed. Laws 2020, LB344, § 82.
- 54-2258 Repealed. Laws 2020, LB344, § 82.
- 54-2259 Repealed. Laws 2020, LB344, § 82.
- 54-2260 Repealed. Laws 2020, LB344, § 82.
- 54-2261 Repealed. Laws 2003, LB 158, § 74.
- 54-2262 Repealed. Laws 2020, LB344, § 82.
- 54-2262.01 Repealed. Laws 2020, LB344, § 82.
- 54-2263 Repealed. Laws 2020, LB344, § 82.
- 54-2264 Repealed. Laws 2020, LB344, § 82.
- 54-2265 Repealed. Laws 2020, LB344, § 82.
- 54-2266 Repealed. Laws 2020, LB344, § 82.
- 54-2267 Repealed. Laws 2020, LB344, § 82.
- 54-2268 Repealed. Laws 2020, LB344, § 82.
- 54-2269 Repealed. Laws 2020, LB344, § 82.
- 54-2270 Repealed. Laws 2020, LB344, § 82.
- 54-2271 Repealed. Laws 2020, LB344, § 82.
- 54-2272 Repealed. Laws 1996, LB 965, § 18.
- 54-2273 Repealed. Laws 1996, LB 965, § 18.
- 54-2274 Repealed. Laws 1996, LB 965, § 18.
- 54-2275 Repealed. Laws 1996, LB 965, § 18.
- 54-2276 Repealed. Laws 2020, LB344, § 82.
- 54-2277 Repealed. Laws 2020, LB344, § 82.
- 54-2278 Repealed. Laws 2020, LB344, § 82.
- 54-2279 Repealed. Laws 2020, LB344, § 82.
- 54-2280 Repealed. Laws 2020, LB344, § 82.
- 54-2281 Repealed. Laws 2020, LB344, § 82.

**54-2282 Repealed. Laws 2003, LB 158, § 74.**

**54-2283 Repealed. Laws 2020, LB344, § 82.**

**54-2284 Repealed. Laws 2003, LB 158, § 74.**

**54-2285 Repealed. Laws 2003, LB 158, § 74.**

**54-2286 Repealed. Laws 2020, LB344, § 82.**

**54-2287 Repealed. Laws 2020, LB344, § 82.**

**54-2288 Repealed. Laws 2020, LB344, § 82.**

**54-2289 Repealed. Laws 2020, LB344, § 82.**

**54-2290 Repealed. Laws 2020, LB344, § 82.**

**54-2291 Repealed. Laws 2020, LB344, § 82.**

**54-2292 Repealed. Laws 2020, LB344, § 82.**

**54-2293 Pseudorabies Control Cash Fund; use; investment; termination.**

The Pseudorabies Control Cash Fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be utilized for the purpose of carrying out the Pseudorabies Control and Eradication 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. The fund terminates on November 14, 2020, and the State Treasurer shall transfer any money in the fund on such date to the Animal Health and Disease Control Cash Fund.

**Source:** Laws 1986, LB 775, § 28; Laws 1990, LB 1004, § 40; R.S.Supp.,1990, § 54-2228; Laws 1991, LB 359, § 59; Laws 1994, LB 1066, § 43; Laws 2020, LB344, § 75.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-2294 Repealed. Laws 2020, LB344, § 82.**

**54-2295 Repealed. Laws 2020, LB344, § 82.**

**54-2296 Repealed. Laws 2020, LB344, § 82.**

**54-2297 Repealed. Laws 2020, LB344, § 82.**

**54-2298 Repealed. Laws 2020, LB344, § 82.**

**54-2299 Repealed. Laws 2020, LB344, § 82.**

**54-22,100 Repealed. Laws 2020, LB344, § 82.****ARTICLE 23****DOMESTICATED CERVINE ANIMAL ACT**

## Section

- 54-2301. Repealed. Laws 1999, LB 404, § 27.
- 54-2302. Act, how cited.
- 54-2303. Legislative findings.
- 54-2304. Terms, defined.
- 54-2305. Domesticated cervine animal facility permit required; when.
- 54-2306. Permit; application; fee; administrative fee; expiration of permit.
- 54-2307. Denial of permit; when.
- 54-2308. Permit; conditions; inspection of facility; fee.
- 54-2309. Permitholder; reports.
- 54-2310. Permitholder; duties; probation; suspension; revocation; procedure; reinstatement.
- 54-2311. Notice or order; service; hearing; procedure; appeal.
- 54-2312. Animal identification.
- 54-2313. Luring or enticement of wildlife prohibited.
- 54-2314. Quarantine; department; powers.
- 54-2315. Cost of testing.
- 54-2316. Escape; recapture or destroy animal.
- 54-2317. Wild cervidae; duties upon discovery.
- 54-2318. Rules and regulations.
- 54-2319. Herd certification program authorized.
- 54-2320. Domesticated Cervine Animal Cash Fund; created; use; investment.
- 54-2321. Administration of act.
- 54-2322. Commission; access to premises.
- 54-2323. Enforcement of act; violations; penalties.
- 54-2324. Act; how construed.

**54-2301 Repealed. Laws 1999, LB 404, § 27.****54-2302 Act, how cited.**

Sections 54-2302 to 54-2324 shall be known and may be cited as the Domesticated Cervine Animal Act.

**Source:** Laws 1999, LB 404, § 1; Laws 2002, LB 1003, § 37.

**54-2303 Legislative findings.**

The Legislature finds and declares that the production of domesticated cervine animals contributes to the strength of the economy of this state. The Legislature further declares that the Department of Agriculture under the powers and duties provided by law for the protection of the health of livestock is the appropriate agency to adopt, promulgate, and enforce rules and regulations necessary to control disease, importation, identification, issuing of permits, containment, and escape of domesticated cervine animals.

**Source:** Laws 1999, LB 404, § 2.

**54-2304 Terms, defined.**

For purposes of the Domesticated Cervine Animal Act, unless the context otherwise requires:

- (1) Commission means the Game and Parks Commission or its authorized agent;



- (2) Department means the Department of Agriculture or its authorized agent;
- (3) Director means the Director of Agriculture or his or her designee;
- (4) Domesticated cervine animal has the same meaning as in section 54-2914; and
- (5) Person means any individual, firm, group of individuals, partnership, limited liability company, corporation, unincorporated association, cooperative, or other entity, public or private.

**Source:** Laws 1999, LB 404, § 3; Laws 2020, LB344, § 76.

**54-2305 Domesticated cervine animal facility permit required; when.**

On and after January 1, 2000, it is unlawful for any person to own, possess, buy, sell, or barter any domesticated cervine animal in this state unless such animal is individually identified and kept at a premises for which a domesticated cervine animal facility permit has been issued by the department. Permits shall be issued only after a determination that the applicant is in compliance with the Domesticated Cervine Animal Act. This section shall not be construed to require a municipal, state, or federal zoo, park, refuge, or wildlife area, a bona fide circus or animal exhibit, or any private, nonprofit zoological society to obtain a permit in order to own, possess, buy, sell, or barter a domesticated cervine animal, but such facilities shall be governed by the provisions of the act and the rules and regulations promulgated thereunder regarding the testing, control, and eradication of cervidae diseases including chronic wasting disease.

**Source:** Laws 1999, LB 404, § 4; Laws 2002, LB 1003, § 38.

**54-2306 Permit; application; fee; administrative fee; expiration of permit.**

(1) On and after August 1, 1999, any person required to obtain a permit under section 54-2305 shall file an application with the department in the manner established by the department. Such application shall include:

- (a) The name, residence, and place of business of the applicant;
- (b) The exact description of the land upon which the domesticated cervine animal facility is to be located and the nature of the applicant's title to the land, whether in fee or under lease; and
- (c) The kind and number of domesticated cervine animals authorized to be kept or reared in such facility.

(2) The department may by rule and regulation prescribe additional information to be contained in such application. The application shall be filed annually with the department on or before October 1 of each year. The annual fee for a domesticated cervine animal facility permit shall not be less than ten dollars nor more than two hundred dollars, as established by the department. Permittees not filing by October 1 shall be considered delinquent. The department may assess an administrative fee for delinquency, not to exceed one hundred dollars per month or a portion of a month, in addition to the permit fees. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees. Such permits shall expire on December 31 of the year of issuance.

**Source:** Laws 1999, LB 404, § 5; Laws 2016, LB909, § 10.

**54-2307 Denial of permit; when.**

The department may deny a domesticated cervine animal facility permit to an applicant who is or has been convicted of violating the laws or regulations of this state or any other state pertaining to domesticated cervine animals or has knowingly committed or participated in the violation of an order of quarantine or other disciplinary order issued by the department.

**Source:** Laws 1999, LB 404, § 6.

**54-2308 Permit; conditions; inspection of facility; fee.**

(1) No person shall be issued a domesticated cervine animal facility permit under section 54-2305 without proof of initial inspection and approval of the minimum construction requirements established under this section.

(2) The department shall inspect and approve or disapprove:

(a) The initial construction and new construction of perimeter fencing; and

(b) The initial construction and new construction of a handling facility which is capable of sorting and restraining individual animals for testing, identification, treatment, or other purposes deemed necessary by the department.

(3) The department may inspect and approve or disapprove:

(a) The maintenance of perimeter fencing; and

(b) The maintenance of a handling facility which is capable of sorting and restraining individual animals for testing, identification, treatment, or other purposes deemed necessary by the department.

(4) The department shall, in consultation with the commission, adopt and promulgate rules and regulations specifying the minimum initial construction, subsequent new construction, and maintenance requirements of perimeter fencing and handling facilities and shall establish a fee to defray the expenses associated with inspecting domesticated cervine animal facilities.

**Source:** Laws 1999, LB 404, § 7.

**54-2309 Permitholder; reports.**

The department may require, by general or special order, a permitholder under the Domesticated Cervine Animal Act to file with the department, on such forms as prescribed, regular or special reports or answers, in writing, to specific questions for the purpose of furnishing information concerning any activity undertaken. Special reports shall be made under oath and filed within thirty days.

**Source:** Laws 1999, LB 404, § 8.

**54-2310 Permitholder; duties; probation; suspension; revocation; procedure; reinstatement.**

(1) A permitholder under the Domesticated Cervine Animal Act shall comply with the act, the rules and regulations adopted and promulgated pursuant thereto, and any order of the director issued pursuant thereto. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director after:

(a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing and to show cause why an order of

probation should not be issued; and (c) the director finds that issuing an order of probation is appropriate, based on the hearing record or on the available information, if the hearing is waived by the permitholder.

(3) A permit may be suspended after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of a right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate, based on the hearing record or on the available information, if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permitholder's facility closed prior to hearing when: (a) The director determines an immediate danger to the health of livestock exists due to infectious, contagious, transmissible diseases in or caused by the permitholder's facility; (b) the director determines that an immediate danger to the health of wildlife exists due to infectious, contagious, transmissible diseases in or caused by the permitholder's facility; and (c) the permitholder receives the 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 permitholder may request, in writing, a date for a hearing and the director shall consider the interests of the permitholder when the department establishes the date and time of the hearing, except that no hearing shall be held earlier than is reasonable under the circumstances. When a permitholder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and shall notify the permitholder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permitholder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available record or on the available information if the hearing is waived by the permitholder.

(6) Any domesticated cervine animal facility for which a permit has been suspended may possess, while correcting the violation, but may not buy, sell, or barter animals, or parts thereof, until the permit is reinstated. Any domesticated cervine animal facility for which a permit has been revoked shall be permitted to dispose of all animals on its premises, with approval of the department, within thirty days after the issuance of the order of revocation and shall close and remain closed until a new permit is issued.

(7) The director may terminate proceedings to suspend or revoke a permit or to subject a permitholder to an order of probation at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated. A person with a revoked permit may be issued a new permit. A permitholder may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings for suspension, revocation, or probation shall not preclude the department from pursuing other civil or criminal actions.

**Source:** Laws 1999, LB 404, § 9.

**54-2311 Notice or order; service; hearing; procedure; appeal.**

(1) Any notice or order under the Domesticated Cervine Animal Act shall be personally served on the permitholder or on the person authorized by the permitholder 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 permitholder 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) A notice to comply under section 54-2310 shall state the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing under section 54-2310 shall state the time and place of the hearing except as provided in subsection (4) of section 54-2310 and shall include notice that the permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of probation, and that the permit may be suspended and the permitholder subject to an order of probation, if the director determines such action is appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended and that the permitholder may also be subject to an order of probation if the director determines such action is appropriate.

(4) The hearings provided for in the act shall be conducted by the director at the time and place the director designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 54-2310, the director shall sustain, modify, or rescind the order. All hearings shall be in compliance with the Administrative Procedure Act.

(5) A permitholder is deemed to waive the right to a hearing if such permitholder 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 permitholder makes a showing to the director that the permitholder 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 permitholder waives the right to a hearing, the director shall make a final finding based upon available information and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 54-2310, the director shall sustain, modify, or rescind the order.

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

(7) Any person aggrieved by any order entered by the director or any other action taken by the department may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1999, LB 404, § 10.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**54-2312 Animal identification.**

A domesticated cervine animal, or any part thereof, shall be appropriately marked for proof of ownership according to rules and regulations adopted by the department. The department shall adopt and promulgate rules and regulations specifying the acceptable forms of domesticated cervine animal identification in a manner which visibly distinguishes a domesticated cervine animal from wild cervidae. The department, in consultation with the commission, shall establish separate identification or proof of ownership requirements for transporting taken domesticated cervine animals.

**Source:** Laws 1999, LB 404, § 11.

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

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

**Source:** Laws 1999, LB 404, § 12; Laws 2009, LB105, § 38.

**54-2314 Quarantine; department; powers.**

(1) In order to prevent, suppress, control, and eradicate dangerous transmissible diseases among the domesticated cervine animals of this state, the department may place in quarantine any county, or part of any county, any private premises, or any private or public stockyards and may quarantine any domesticated cervine animal infected with such disease or which has been or is suspected of having been exposed to such disease. Such animals shall remain under quarantine until released by the department. An infected animal may be destroyed as provided in the Animal Health and Disease Control Act.

(2) The department may regulate or prohibit the arrival into, departure from, and movement within the state of any domesticated cervine animal infected with a dangerous transmissible disease or exposed or suspected of having been exposed to such disease.

**Source:** Laws 1999, LB 404, § 13; Laws 2020, LB344, § 77.

**Cross References**

**Animal Health and Disease Control Act**, see section 54-2901.

**54-2315 Cost of testing.**

When testing of domesticated cervine animals is performed pursuant to an order by the department, the owners of such animals are responsible for the

cost of gathering, confining, restraining, and testing such animals and for providing the necessary facilities and assistance.

**Source:** Laws 1999, LB 404, § 14.

**54-2316 Escape; recapture or destroy animal.**

(1) Any permitholder under the Domesticated Cervine Animal Act shall, within twenty-four hours after the discovery of the escape of any such animals, notify the department, which shall immediately notify the commission, of such escape.

(2) It is the responsibility of the permitholder to recapture or destroy any escaped domesticated cervine animal within five days.

(3) If the permitholder is unwilling or unable to capture any escaped domesticated cervine animal within five days after the discovery of such escape, the commission may destroy such escaped animals. The commission may, on a case-by-case basis, extend the number of days for a permitholder to recapture or destroy any escaped domesticated cervine animal.

(4) Any escaped domesticated cervine animal known to have originated from an area placed under quarantine by the department pursuant to section 54-2314 may be destroyed by the commission upon notice of the escape of such animal.

(5) Any expenses incurred by the department or the commission to recapture or destroy escaped domesticated cervine animals shall be assessed to the permitholder. The department and the commission shall not be held liable for the value of any domesticated cervine animal destroyed under this section.

**Source:** Laws 1999, LB 404, § 15.

**54-2317 Wild cervidae; duties upon discovery.**

Any permitholder under the Domesticated Cervine Animal Act shall, within twenty-four hours after the discovery of wild cervidae in a domesticated cervine animal facility, notify the commission and the department of such occurrence. The commission shall adopt policies providing for the disposition of wild cervidae found in a domesticated cervine animal facility and shall consult with the department before removal of such animals from the facility.

**Source:** Laws 1999, LB 404, § 16.

**54-2318 Rules and regulations.**

The department may adopt and promulgate rules and regulations for the testing, control, and eradication of diseases, including, but not limited to, chronic wasting disease, brucellosis, and tuberculosis in domesticated cervine animal herds in the state. The rules and regulations may include, but are not limited to, provisions governing:

(1) Testing, test results, and test subjects;

(2) Intrastate change of ownership, including provisions requiring all domesticated cervine breeding animals to be tested or originate from a herd which is in a herd certification program as established by the department under section 54-2319; and

(3) Any other issues deemed necessary by the department to effectively control and eradicate diseases.

**Source:** Laws 1999, LB 404, § 17.

**54-2319 Herd certification program authorized.**

In addition to administering the Domesticated Cervine Animal Act and conducting program activities authorized by the act, the department may develop a herd certification program and may cooperate with the United States Government, or any department, agency, or officer thereof, in the development of such program, including the adoption of or reference to applicable federal regulations or industry guidelines.

**Source:** Laws 1999, LB 404, § 18.

**54-2320 Domesticated Cervine Animal Cash Fund; created; use; investment.**

The department may assess and collect costs and fees for services provided, fees assessed, and expenses incurred pursuant to its responsibilities under the Domesticated Cervine Animal Act. All costs and fees assessed and collected pursuant to the act shall be remitted to the State Treasurer for credit to the Domesticated Cervine Animal Cash Fund, which fund is hereby created. The fund shall be utilized by the department for the purpose of carrying out 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 1999, LB 404, § 19; Laws 2016, LB909, § 11.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**54-2321 Administration of act.**

In administering the Domesticated Cervine Animal Act, the agents and employees of the department:

(1) Shall have access, upon notification, to any premises where domesticated cervine animals may be for the purpose of implementing the rules and regulations adopted and promulgated under the act; and

(2) May enter any premises occupied by a permitholder at any reasonable time to examine books and records maintained by the permitholder. Such books and records shall be maintained by the permitholder for review for five years after the death or disposal of any domesticated cervine animal from the facility.

**Source:** Laws 1999, LB 404, § 20.

**54-2322 Commission; access to premises.**

The commission shall have access, upon notification, to any premises where domesticated cervine animals may be for the purpose of assessing or removing populations of wild cervidae.

**Source:** Laws 1999, LB 404, § 21; Laws 2002, LB 1003, § 40.

**54-2323 Enforcement of act; violations; penalties.**

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

(2) The Attorney General or the county attorney of the county in which violations of the act, rules, or regulations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay.

(3) Any person who violates the Domesticated Cervine Animal Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a Class IV misdemeanor for the first offense and a Class II misdemeanor for each subsequent offense.

**Source:** Laws 1999, LB 404, § 22.

**54-2324 Act; how construed.**

Nothing in the Domesticated Cervine Animal Act shall be construed to authorize any person to import, own, or possess any species of cervine animal the importation or possession of which is prohibited under section 37-524 and the rules and regulations promulgated thereunder.

**Source:** Laws 2002, LB 1003, § 39.

**ARTICLE 24**

**LIVESTOCK WASTE MANAGEMENT ACT**

Section	
54-2401.	Transferred to section 54-2416.
54-2402.	Transferred to section 54-2417.
54-2403.	Repealed. Laws 2004, LB 916, § 29.
54-2404.	Transferred to section 54-2419.
54-2404.01.	Transferred to section 54-2420.
54-2404.02.	Transferred to section 54-2421.
54-2405.	Repealed. Laws 2004, LB 916, § 29.
54-2406.	Transferred to section 54-2423.
54-2407.	Repealed. Laws 2004, LB 916, § 29.
54-2408.	Transferred to section 54-2428.
54-2409.	Repealed. Laws 2004, LB 916, § 29.
54-2410.	Repealed. Laws 2004, LB 916, § 29.
54-2411.	Transferred to section 54-2433.
54-2412.	Transferred to section 54-2429.
54-2413.	Transferred to section 54-2435.
54-2414.	Transferred to section 54-2434.
54-2415.	Transferred to section 54-2430.
54-2416.	Act, how cited.
54-2417.	Terms, defined.
54-2418.	Department; duties.
54-2419.	Permits; approval; conditions; restrictions.
54-2420.	Section; how construed.
54-2421.	Cold water class A streams; designation.
54-2422.	Inspection and construction and operating permit requirements; exemptions.



Section	
54-2423.	Animal feeding operation; request inspection; when; fees; department; duties.
54-2424.	Animal feeding operation; operating requirements; when.
54-2425.	National Pollutant Discharge Elimination System permit; department; duties.
54-2426.	Applications; contents.
54-2427.	Public participation; when.
54-2428.	National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.
54-2429.	National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural Resources; Department of Environment and Energy; powers; applicability of Engineers and Architects Regulation Act.
54-2430.	Surface water runoff; diversion requirements; increase in acreage limitation; conditions.
54-2431.	Applications; rejection; when; disciplinary actions; grounds.
54-2432.	Acts prohibited.
54-2433.	Department; contracts authorized.
54-2434.	Enforcement of act; legislative intent.
54-2435.	Council; rules and regulations.
54-2436.	Reinstatement of operating permit; conditions; fee.
54-2437.	Conditional use permit or special exception; county planning commission or county board; powers.
54-2438.	Major modification; applications; contents.

**54-2401 Transferred to section 54-2416.**

**54-2402 Transferred to section 54-2417.**

**54-2403 Repealed. Laws 2004, LB 916, § 29.**

**54-2404 Transferred to section 54-2419.**

**54-2404.01 Transferred to section 54-2420.**

**54-2404.02 Transferred to section 54-2421.**

**54-2405 Repealed. Laws 2004, LB 916, § 29.**

**54-2406 Transferred to section 54-2423.**

**54-2407 Repealed. Laws 2004, LB 916, § 29.**

**54-2408 Transferred to section 54-2428.**

**54-2409 Repealed. Laws 2004, LB 916, § 29.**

**54-2410 Repealed. Laws 2004, LB 916, § 29.**

**54-2411 Transferred to section 54-2433.**

**54-2412 Transferred to section 54-2429.**

**54-2413 Transferred to section 54-2435.**

**54-2414 Transferred to section 54-2434.**

**54-2415 Transferred to section 54-2430.**

**54-2416 Act, how cited.**

Sections 54-2416 to 54-2438 shall be known and may be cited as the Livestock Waste Management Act.

**Source:** Laws 1998, LB 1209, § 1; Laws 1999, LB 822, § 7; Laws 2003, LB 619, § 15; R.S.Supp.,2003, § 54-2401; Laws 2004, LB 916, § 5; Laws 2006, LB 975, § 1.

**54-2417 Terms, defined.**

For purposes of the Livestock Waste Management Act:

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

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

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

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

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

(6) Council means the Environmental Quality Council;

(7) Department means the Department of Environment and Energy;

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

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

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

(11) Major modification means an expansion or increase to the lot area or feeding area; change in the location of the animal feeding operation; change in

the methods of waste treatment, waste storage, or land application of waste; increase in the number of animals; change in animal species; or change in the size or location of the livestock waste control facility;

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

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

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

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

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

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

**Source:** Laws 1998, LB 1209, § 2; Laws 1999, LB 870, § 5; R.S.Supp.,2002, § 54-2402; Laws 2004, LB 916, § 6; Laws 2006, LB 975, § 2; Laws 2009, LB56, § 1; Laws 2019, LB302, § 57.

By enacting legislation that made it unlawful to operate an animal feeding operation without having an approved livestock waste control facility, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

#### **54-2418 Department; duties.**

The department shall (1) administer the animal feeding operation permitting program in accordance with the National Pollutant Discharge Elimination System of the federal Clean Water Act, 33 U.S.C. 1251 et seq., through the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts and (2) administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.

**Source:** Laws 2004, LB 916, § 7; Laws 2006, LB 975, § 3.

#### **Cross References**

**Environmental Protection Act**, see section 81-1532.

**54-2419 Permits; approval; conditions; restrictions.**

(1) No new animal feeding operation shall be issued a National Pollutant Discharge Elimination System permit or a construction and operating permit in any part of a watershed that feeds directly or indirectly into a cold water class A stream, delineated pursuant to section 54-2421.

(2) An existing animal feeding operation may not expand if its livestock waste control facility is located within one mile of a designated cold water class A stream segment delineated pursuant to section 54-2421 and the same cold water class A stream watershed as the animal feeding operation, except that an existing animal feeding operation used for research sponsored by the University of Nebraska at a facility owned by the University of Nebraska may expand if the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(3) Existing animal feeding operations may receive a new or modified National Pollutant Discharge Elimination System permit, a new or modified construction and operating permit, a modified operating permit, or a modified construction approval if:

(a) The existing animal feeding operation does not currently have a National Pollutant Discharge Elimination System permit or a construction and operating permit and upon inspection by the department a determination is made that one is necessary;

(b) The existing animal feeding operation modifies its operation but does not expand its approved livestock waste control facility;

(c) The existing animal feeding operation's livestock waste control facility is located more than two miles from a designated cold water class A stream segment delineated pursuant to section 54-2421 and in the same cold water class A stream watershed as the animal feeding operation; or

(d) The existing animal feeding operation or livestock waste control facility is located less than two miles but more than one mile from a cold water class A stream delineated pursuant to section 54-2421, and the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(4) The department may deny or restrict an application for a transfer or major modification of an existing National Pollutant Discharge Elimination System permit or a construction and operating permit based upon the potential degradation of a cold water class A stream.

**Source:** Laws 1998, LB 1209, § 4; Laws 1999, LB 822, § 8; Laws 1999, LB 870, § 7; R.S.Supp.,2002, § 54-2404; Laws 2004, LB 916, § 8; Laws 2006, LB 975, § 4.

**54-2420 Section; how construed.**

Nothing in section 54-2419 shall be construed to change the zoning authority of a county that existed prior to May 25, 1999.

**Source:** Laws 1999, LB 822, § 10; R.S.Supp.,2002, § 54-2404.01; Laws 2004, LB 916, § 9.

Because this section indicates that the Legislature did not intend to occupy the entire field of livestock waste management regulation and that the state requirements in the Livestock Waste Management Act were meant to coexist with local re-

quirements, there is no field preemption of local laws by the Livestock Waste Management Act. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

#### **54-2421 Cold water class A streams; designation.**

A map delineating segments and watershed boundaries for cold water class A streams, as designated prior to May 25, 1999, and prepared by the Department of Environment and Energy and the Department of Natural Resources, shall be maintained by the Department of Environment and Energy and used by the department for determinations made concerning cold water class A streams and stream watersheds under the Livestock Waste Management Act unless changed by the council. Beginning on May 25, 1999, the council may designate and may redesignate previously designated waters of this state as cold water class A streams for purposes of the act based on the determination by the council that the waters provide or could provide habitat of sufficient water volume or flow, water quality, substrate composition, and water temperature capable of maintaining year-round populations of cold water biota, including reproduction of a salmonoid (trout) population. The council shall not designate or redesignate a stream as a cold water class A stream unless the stream has supported the reproduction of a salmonoid (trout) population within the previous five years. The department shall revise and maintain the cold water class A stream and stream watershed map to incorporate all designations and redesignations of the council.

**Source:** Laws 1999, LB 822, § 9; Laws 2000, LB 900, § 242; R.S.Supp.,2002, § 54-2404.02; Laws 2004, LB 916, § 10; Laws 2019, LB302, § 58.

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

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

**Source:** Laws 2004, LB 916, § 11; Laws 2006, LB 975, § 5; Laws 2009, LB56, § 2.

#### **Cross References**

**Environmental Protection Act**, see section 81-1532.

**54-2423 Animal feeding operation; request inspection; when; fees; department; duties.**

(1) If any person owning or operating an animal feeding operation (a) does not hold a National Pollutant Discharge Elimination System permit, an operating permit, or a construction and operating permit or have construction approval, (b) has not been notified by the department that no National Pollutant Discharge Elimination System permit or construction and operating permit is required, or (c) is not exempt under section 54-2422, such person shall, on forms prescribed by the department, request the department to inspect such person's animal feeding operation to determine if a livestock waste control facility is required. If an inspection is requested prior to January 1, 1999, an inspection fee for such inspection shall not be assessed. For inspections requested on or after July 16, 2004, there shall be an inspection fee established by the council with a minimum fee of one hundred dollars and a maximum fee of five hundred dollars. Such fee may be set according to animal capacity.

(2) The department shall, in conjunction with natural resources districts and the Cooperative Extension Service of the University of Nebraska, publicize information to make owners and operators of affected animal feeding operations aware of the need to request an inspection.

(3) Any person required to request an inspection under this section who operates an animal feeding operation after January 1, 2000, without first submitting the request for inspection required under this section shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense. Exceptions to this provision are:

(a) An animal feeding operation exempted by the department from National Pollutant Discharge Elimination System permit requirements prior to July 16, 2004; or

(b) A livestock operation that became an animal feeding operation by enactment of the Livestock Waste Management Act as such act existed on July 16, 2004, but was not required to request an inspection prior to that date.

(4) A person meeting the provisions of subdivision (3)(b) of this section shall request an inspection prior to January 1, 2009, and pay fees required pursuant to subsection (1) of this section.

(5) Any person required to request an inspection under subsection (4) of this section who operates an animal feeding operation after December 31, 2008, shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense.

**Source:** Laws 1998, LB 1209, § 6; Laws 1999, LB 870, § 8; R.S.Supp.,2002, § 54-2406; Laws 2004, LB 916, § 12; Laws 2006, LB 975, § 6; Laws 2007, LB677, § 1.

**54-2424 Animal feeding operation; operating requirements; when.**

Any animal feeding operation which was in existence on January 1, 2004, and does not have any permit on March 17, 2006, shall be subject, in addition to any other requirements of the Environmental Protection Act, Livestock Waste Management Act, and rules and regulations adopted and promulgated

pursuant to such acts, to the same or substantially similar operating requirements as the requirements that existed on January 1, 2004.

**Source:** Laws 2004, LB 916, § 13; Laws 2006, LB 975, § 7.

**Cross References**

**Environmental Protection Act**, see section 81-1532.

**54-2425 National Pollutant Discharge Elimination System permit; department; duties.**

(1) After an initial inspection has been conducted pursuant to section 54-2423 for each new application for a construction and operating permit or major modification submitted to the department, the department shall, within ten days, make a determination as to whether a National Pollutant Discharge Elimination System permit is required for the proposed animal feeding operation. If an application has been submitted prior to an initial inspection being conducted pursuant to section 54-2423, such application shall be returned to the applicant without the department conducting any review of the application.

(2) If it is determined that a National Pollutant Discharge Elimination System permit is required, the department shall contact the applicant to determine whether the applicant requests the department to delay review of the construction and operating permit or major modification application until an individual National Pollutant Discharge Elimination System permit application is submitted.

(3) If the applicant requests the department to delay review of the construction and operating permit or major modification application, upon receipt of the individual National Pollutant Discharge Elimination System permit application and the construction and operating permit or major modification application, the applications shall be reviewed simultaneously utilizing the processes and timelines for review of an individual National Pollutant Discharge Elimination System permit application.

(4) If (a) the department determines a National Pollutant Discharge Elimination System permit is not required or (b) if the applicant requests the department to proceed with review of the construction and operating permit or major modification application independent of a National Pollutant Discharge Elimination System permit application, the department shall, for both subdivisions (4)(a) and (4)(b) of this section:

(i) Within five days send a copy of the application to the natural resources district or districts and the county board or boards of the counties in which the livestock waste control facility is located or proposed to be located. The natural resources district or districts and the county board or boards shall have thirty days to comment to the department regarding any conditions that may exist at the proposed site which the department should consider regarding the content of the application for a construction and operating permit or major modification;

(ii) Within sixty days, (A) issue a proposed decision on the application for a construction and operating permit or major modification and (B) issue a notice providing an opportunity for any interested person to submit written comments on such proposed decision within thirty days after the first day of publication of such notice. The notice shall be published in a daily or weekly newspaper or other publication with general circulation in the area of the existing or

proposed animal feeding operation, and a copy of the notice shall be provided to the applicant; and

(iii) Within one hundred ten days approve or deny the application and transmit its findings and conclusions to the applicant.

**Source:** Laws 2004, LB 916, § 14; Laws 2006, LB 975, § 8.

**54-2426 Applications; contents.**

Each application for a National Pollutant Discharge Elimination System permit or construction and operating permit shall include, in addition to other requirements, (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application and (2) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged. The nutrient management plan shall be considered a part of the application. For National Pollutant Discharge Elimination System permits, the plan shall, at a minimum, meet and conform to the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq. A copy of the nutrient management plan and supporting documentation shall continuously be kept on file at the department. The operator shall at least annually update changes made to the nutrient management plan as required pursuant to rules and regulations adopted and promulgated by the council. For a construction and operating permit, the plan shall contain, at a minimum, the information which the department required to be included in all nutrient management plans on January 1, 2004.

**Source:** Laws 2004, LB 916, § 15; Laws 2006, LB 975, § 9.

**54-2427 Public participation; when.**

Once the department has made a determination to approve or deny an application for a National Pollutant Discharge Elimination System permit, the department shall provide opportunities for public participation, including, but not limited to, public comment, opportunity for public hearing, and agency response to comments, which are at least as stringent as the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq.

**Source:** Laws 2004, LB 916, § 16.

**54-2428 National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.**

(1) Any person required to obtain a National Pollutant Discharge Elimination System permit for an animal feeding operation or a construction and operating permit for a livestock waste control facility shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fee shall be established by the council with a maximum fee of two hundred dollars. For major modifications to an application or a permit, the fee shall equal the amount of the application fee.

(2) On or before March 1, 2006, and each year thereafter, each person who has a National Pollutant Discharge Elimination System permit or who has a



large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and a state operating permit, a construction and operating permit, or a construction approval issued pursuant to the Environmental Protection Act or the Livestock Waste Management Act shall pay a per head annual fee based on the permitted capacity identified in the permit for that facility. The department shall invoice each permittee by February 1, 2006, and February 1 of each year thereafter.

(3) The initial annual fee shall be: Beef cattle, ten cents per head; veal calves, ten cents per head; dairy cows, fifteen cents per head; swine larger than fifty-five pounds, four dollars per one hundred head or fraction thereof; swine less than fifty pounds, one dollar per one hundred head or fraction thereof; horses, twenty cents per head; sheep or lambs, one dollar per one hundred head or fraction thereof; turkeys, two dollars per one thousand head or fraction thereof; chickens or ducks with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens or ducks with other than liquid manure facility, one dollar per one thousand head or fraction thereof. This fee structure may be reviewed in fiscal year 2007-08.

(4) Beginning in fiscal year 2007-08, the department shall annually review and adjust the fee structure in this section and section 54-2423 to ensure that fees are adequate to meet twenty percent of the program costs from the previous fiscal year. All fees collected under this section and sections 54-2423, 54-2435, and 54-2436 shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the Livestock Waste Management Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Livestock Waste Management Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) On or before January 1 of each year, the department shall submit electronically a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the Livestock Waste Management Act, including the number of inspections conducted, the number of animal feeding operations with livestock waste control facilities, the number of animal feeding operations inspected, the size of the livestock waste control facilities, the results of water quality monitoring programs, and other elements relating to carrying out the act. The Appropriations Committee of the Legislature shall review the report in its analysis of executive programs in order to verify that the revenue generated from fees was used solely to offset appropriate and reasonable costs associated with carrying out the act.

**Source:** Laws 1998, LB 1209, § 8; Laws 1999, LB 870, § 10; R.S.Supp.,2002, § 54-2408; Laws 2004, LB 916, § 17; Laws 2006, LB 975, § 10; Laws 2009, First Spec. Sess., LB3, § 30; Laws 2012, LB782, § 84.

#### Cross References

**Environmental Protection Act**, see section 81-1532.

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**54-2429 National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural**

**Resources; Department of Environment and Energy; powers; applicability of Engineers and Architects Regulation Act.**

(1) An applicant for a National Pollutant Discharge Elimination System permit or a construction and operating permit under the Environmental Protection Act or the Livestock Waste Management Act shall, before issuance by the Department of Environment and Energy, obtain any necessary approvals from the Department of Natural Resources under the Safety of Dams and Reservoirs Act and certify such approvals to the Department of Environment and Energy. The Department of Environment and Energy, with the concurrence of the Department of Natural Resources, may require the applicant to obtain approval from the Department of Natural Resources for any dam, holding pond, or lagoon structure which would not otherwise require approval under the Safety of Dams and Reservoirs Act but which in the event of a failure could result in a significant discharge into waters of the state and have a significant impact on the environment. The Department of Environment and Energy may provide for the payment of such costs of the Department of Natural Resources with revenue generated under section 54-2428.

(2) An applicant required to obtain a National Pollutant Discharge Elimination System permit is subject to the requirements of the Engineers and Architects Regulation Act.

(3) An applicant who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit is subject to the requirements of the Engineers and Architects Regulation Act.

(4) An applicant who has a small or medium animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit, but not required to obtain a National Pollutant Discharge Elimination System permit, is exempt from the Engineers and Architects Regulation Act.

(5) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for a livestock waste control facility if after an inspection: (a) The department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or (b) the department has reason to believe that an animal feeding operation with a livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts. Animal feeding operations not required to have a permit under the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts are exempt from the Engineers and Architects Regulation Act.

**Source:** Laws 1998, LB 1209, § 12; Laws 1999, LB 870, § 13; Laws 2000, LB 900, § 243; Laws 2003, LB 619, § 16; R.S.Supp.,2003, § 54-2412; Laws 2004, LB 916, § 18; Laws 2005, LB 335, § 80; Laws 2006, LB 975, § 11; Laws 2007, LB313, § 1; Laws 2019, LB302, § 59.

**Cross References**

Engineers and Architects Regulation Act, see section 81-3401.

Environmental Protection Act, see section 81-1532.  
 Safety of Dams and Reservoirs Act, see section 46-1601.

**54-2430 Surface water runoff; diversion requirements; increase in acreage limitation; conditions.**

(1) Except as provided in this section, no new livestock waste control facility shall be constructed and no physical onsite activities specific to a new livestock waste control facility, except the use of a borrow site for construction of other components of the animal feeding operation, shall be initiated unless surface water runoff from the upstream area, except incidental runoff, is adequately diverted around the structure and is not permitted to enter the reservoir area. For purposes of this section, incidental runoff means the runoff that drains from the slope of the embankments, the top of the dam, the reservoir area, the feedlots, the associated roadways, and up to twenty-five acres of additional area that cannot be diverted. Incidental runoff capacity from a twenty-five-year frequency, twenty-four-hour storm shall be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials.

(2) The Department of Natural Resources shall permit a requested increase in the twenty-five-acre limitation for a new livestock waste control facility for an animal feeding operation for which an inspection was requested prior to January 1, 2000, unless the department determines that the detriment to existing water users that would result from permitting the acreage increase would outweigh the detriment to the operator of the animal feeding operation if the increase were not permitted.

(3) For other new livestock waste control facilities, the Department of Natural Resources may permit an increase in the twenty-five-acre limitation if it determines that (a) the applicant has no reasonable way to limit the amount of the additional runoff acreage to twenty-five acres or less at the proposed location of the livestock waste control facility, (b) the applicant has no reasonable alternative for relocating the livestock waste control facility so that the additional runoff acreage would not exceed twenty-five acres, and (c) either (i) an increase in the permitted runoff acreage would not reduce water supplies to the detriment of existing water users or (ii)(A) the requested facility is for a proposed expansion of an animal feeding operation in existence and in compliance with the Livestock Waste Management Act as of January 1, 2003, (B) the amount of the runoff acreage permitted in excess of the twenty-five-acre limitation is not more than fifteen percent of total permitted feedlot area, and (C) any detriment to existing water users that would result from permitting the acreage increase would be outweighed by the detriment to the operator of the animal feeding operation if the increase were not permitted.

**Source:** Laws 2003, LB 619, § 17; R.S.Supp.,2003, § 54-2415; Laws 2004, LB 916, § 19.

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

(1) For purposes of this section:

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

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

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

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

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

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

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

**Source:** Laws 2004, LB 916, § 20; Laws 2006, LB 975, § 12; Laws 2009, LB56, § 3.

#### **54-2432 Acts prohibited.**

Except as provided in section 54-2422, it shall be unlawful for any person to:

(1) Construct or operate an animal feeding operation prior to an inspection from the department, unless exempted from inspection by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(2) Construct a livestock waste control facility without first obtaining a construction and operating permit from the department, unless exempted from the requirement for a construction and operating permit by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts. The use of a borrow site for construction of other components of the animal feeding operation does not constitute construction of the livestock waste control facility;

(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(4) Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, a construction and operating permit, or an exemption from the department, if required by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts; or

(5) Violate the terms of a National Pollutant Discharge Elimination System permit or construction and operating permit or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.

**Source:** Laws 2004, LB 916, § 21; Laws 2006, LB 975, § 13.

#### Cross References

**Environmental Protection Act**, see section 81-1532.

By enacting legislation that made it unlawful to discharge livestock waste without obtaining the appropriate permits or an exemption, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

By enacting legislation that made it unlawful to operate an animal feeding operation without having an approved livestock waste control facility, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

#### **54-2433 Department; contracts authorized.**

In carrying out its responsibilities under the Livestock Waste Management Act, the department may contract with the various natural resources districts as appropriate. The contract may include all tasks or duties necessary to carry out the act but shall not enable the natural resources districts to issue National Pollutant Discharge Elimination System permits or construction and operating permits or initiate enforcement proceedings. The contract may provide for payment of natural resources districts' costs by the department.

**Source:** Laws 1998, LB 1209, § 11; Laws 1999, LB 870, § 12; R.S.Supp.,2002, § 54-2411; Laws 2004, LB 916, § 22; Laws 2006, LB 975, § 14.

#### **54-2434 Enforcement of act; legislative intent.**

It is the intent of the Legislature that in enforcing the provisions of the Livestock Waste Management Act the department shall give priority to the larger animal feeding operations in the state.

**Source:** Laws 1998, LB 1209, § 14; R.S.1943, (1998), § 54-2414; Laws 2004, LB 916, § 23.

#### **54-2435 Council; rules and regulations.**

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

- (a) Requirements for animal feeding operations which shall include:
  - (i) Location restrictions and setbacks to protect waters of the state;
  - (ii) Applications and inspection requests;
  - (iii) Identification of ownership;

- (iv) Numbers, size, and types of animals;
  - (v) Type of waste control facility;
  - (vi) Design, construction, operation, and maintenance;
  - (vii) Monitoring of surface or ground water which may be necessary as determined by the department where a significant risk to waters of the state exists;
  - (viii) Nutrient management, a nutrient management plan to be submitted with the application for a National Pollutant Discharge Elimination System permit or a construction and operating permit, and a description of the types of changes made to the nutrient management plan required to be updated pursuant to section 54-2426;
  - (ix) Closure and corrective action;
  - (x) Best management practices; and
  - (xi) Other such requirements deemed necessary to protect waters of the state;
- (b) A National Pollutant Discharge Elimination System permit process for animal feeding operations;
- (c) National Pollutant Discharge Elimination System permit issuance, denial, renewal, revocation, suspension, reinstatement, termination, or transfer;
- (d) Training requirements for permitholders;
- (e) Construction and operating permit issuance, denial, revocation, suspension, reinstatement, termination, or transfer;
- (f) Construction and operating permit and National Pollutant Discharge Elimination System permit major modification issuance, denial, revocation, or termination;
- (g) Public notice and hearing requirements;
- (h) Requirements for existing livestock waste control facilities;
- (i) Requirements for adequate area and proper methods and rates for land application of waste and nutrients such as nitrogen and phosphorus;
- (j) Requirements for record keeping and reporting;
- (k) A fee schedule pursuant to sections 54-2423 and 54-2428;
- (l) Procedures for collection of fees pursuant to this section and sections 54-2423 and 54-2428;
- (m) Procedures for exemptions as provided for in the requirements of the Environmental Protection Act and the Livestock Waste Management Act; and
- (n) Procedures governing proceedings to determine discharge violations under section 54-2431.
- (2) Rules and regulations adopted and promulgated under this section may be based upon the size of the animal feeding operation and the form of waste management and may include more stringent requirements for larger animal feeding operations and waste control technologies that are more likely to cause adverse impacts.
- (3) The council may adopt and promulgate any other rules and regulations necessary to carry out the purposes of the Environmental Protection Act and the Livestock Waste Management Act.
- (4) Rules and regulations adopted pursuant to this section shall be no less stringent than the federal Clean Water Act, 33 U.S.C. 1251 et seq.

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

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

**Cross References**

**Environmental Protection Act**, see section 81-1532.

**54-2436 Reinstatement of operating permit; conditions; fee.**

(1) Any person who held an operating permit on December 31, 2005, and whose permit expired pursuant to rules and regulations may file a request for reinstatement of the operating permit subject to the following conditions:

- (a) The request must be filed on or before December 31, 2007;
- (b) The person shall certify that the livestock operation is in compliance with the operating permit as it existed on the date the operating permit expired; and
- (c) The request shall be accompanied by a twenty-five-dollar nonrefundable filing fee.

(2) The department shall, upon receipt of a complete and timely request for reinstatement, reinstate the permit with the same conditions as existed when the permit expired.

**Source:** Laws 2006, LB 975, § 16.

**54-2437 Conditional use permit or special exception; county planning commission or county board; powers.**

(1) A county planning commission or county board shall grant a conditional use permit or special exception to an existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and the construction or modification of the livestock waste control facility will not increase the animal capacity of such operation. The number of conditional use permits or special exceptions granted to such an operation under this subsection is unlimited.

(2) A county planning commission or county board shall grant a conditional use permit or special exception to an existing beef cattle or dairy cattle animal feeding operation that has an animal capacity of five thousand or fewer beef cattle or three thousand five hundred or fewer dairy cattle that is seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and construction or modification of the livestock waste control facility would allow the animal capacity of the operation to increase not more than:

- (a) Five hundred beef cattle if the operation has an existing animal capacity of three thousand beef cattle or fewer;

(b) Three hundred beef cattle if the operation has an existing animal capacity of more than three thousand beef cattle but no more than five thousand beef cattle;

(c) Three hundred fifty dairy cattle if the operation has an existing animal capacity of two thousand dairy cattle or fewer; or

(d) Two hundred ten dairy cattle if the operation has an existing animal capacity of more than two thousand dairy cattle but no more than three thousand five hundred dairy cattle.

Only one conditional use permit or special exception per operation is allowed under this subsection.

**Source:** Laws 2006, LB 975, § 17.

**54-2438 Major modification; applications; contents.**

Each application for a major modification of an operating permit, a construction approval, a construction and operating permit, or a National Pollutant Discharge Elimination System permit or an application for a construction and operating permit or a National Pollutant Discharge Elimination System permit shall contain (1) a certification that the information contained in the application is accurate to the best of the applicant’s knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application, (2) a detailed description of the major modification requested, (3) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged, and (4) such information as required by rules and regulations adopted and promulgated by the council.

**Source:** Laws 2006, LB 975, § 18.

**ARTICLE 25**

**CONTROLLED SUBSTANCES ANIMAL WELFARE ACT**

Section

- 54-2501. Act, how cited.
- 54-2502. Purpose of act.
- 54-2503. Terms, defined.
- 54-2504. Collaborating veterinarian agreement; required; when; contents.
- 54-2505. Liability.
- 54-2506. Insurance required.

**54-2501 Act, how cited.**

Sections 54-2501 to 54-2506 shall be known and may be cited as the Controlled Substances Animal Welfare Act.

**Source:** Laws 1999, LB 573, § 1.

**54-2502 Purpose of act.**

The purpose of the Controlled Substances Animal Welfare Act is to allow animal welfare organizations to obtain proper controlled substances for the purpose of humane euthanasia of seized, stray, injured, sick, homeless, abandoned, or unwanted domesticated and nondomesticated or wild animals.

**Source:** Laws 1999, LB 573, § 2.



**54-2503 Terms, defined.**

For purposes of the Controlled Substances Animal Welfare Act:

- (1) Animal welfare organization means a Nebraska nonprofit corporation whose purpose is promoting the welfare, protection, and humane treatment of animals, and whose activities may include the seizure, impoundment, boarding, or kenneling of stray, injured, sick, homeless, abandoned, or unwanted animals;
- (2) Euthanizing drug means sodium pentobarbital or any controlled substance used for the purpose of humane euthanasia of seized, stray, injured, sick, homeless, abandoned, or unwanted animals; and
- (3) Veterinarian means a person authorized by law to practice veterinary medicine in this state.

**Source:** Laws 1999, LB 573, § 3.

**54-2504 Collaborating veterinarian agreement; required; when; contents.**

Possession and administration of a euthanizing drug by an animal welfare organization shall be pursuant to a collaborating veterinarian agreement. A collaborating veterinarian agreement is between a veterinarian and an animal welfare organization and includes:

- (1) Designation of the responsible individual or individuals for the animal welfare organization;
- (2) Provisions for the proper storage and inventory of the euthanizing drugs;
- (3) Maintenance of effective controls against the diversion of such drugs;
- (4) Provisions for proper training of any animal welfare organization staff whose duties include administering a euthanizing drug. Such training includes information in at least the following areas: The pharmacology, proper administration, and storage of euthanizing drugs; federal and state laws regulating the storage and inventory of euthanizing drugs; stress management; and proper disposal of euthanized animals; and
- (5) Maintenance of a valid veterinary-client-patient relationship.

Pursuant to a collaborating veterinarian agreement, a veterinarian shall maintain a separate registration under section 28-408 at the principal place of business of the animal welfare organization.

**Source:** Laws 1999, LB 573, § 4.

**54-2505 Liability.**

If a veterinarian assists an animal welfare organization in obtaining euthanizing drugs pursuant to a collaborating veterinarian agreement authorized by the Controlled Substances Animal Welfare Act, such veterinarian is not liable for any acts or omissions on the part of the animal welfare organization, except that disciplinary action may be taken against the separate registration pursuant to section 28-409. The animal welfare organization is liable under the Uniform Controlled Substances Act for acts or omissions on the part of its staff members.

**Source:** Laws 1999, LB 573, § 5.

**Cross References**

Uniform Controlled Substances Act, see section 28-401.01.

**54-2506 Insurance required.**

No animal welfare organization shall accept controlled substances under a collaborating veterinarian agreement unless, at the time of the acceptance, it has in effect third-party liability insurance covering damages resulting from the improper handling or control of controlled substances.

**Source:** Laws 1999, LB 573, § 6.

**ARTICLE 26****COMPETITIVE LIVESTOCK MARKETS ACT**

## Section

- 54-2601. Act, how cited.
- 54-2602. Terms, defined.
- 54-2603. Repealed. Laws 2016, LB176, § 7.
- 54-2604. Packers; acts prohibited.
- 54-2604.01. Swine production contract; contents; cancellation; procedure; violations; Attorney General; duties; fine; Department of Agriculture; rules and regulations.
- 54-2605. Violations by packer; enforcement; penalty.
- 54-2606. Packer violation; proceeds of livestock sale; fines; distribution.
- 54-2607. Sales of swine; packers; prohibited acts.
- 54-2608. Sales of swine; authorized; when.
- 54-2609. Sales of swine; contracts allowed; conditions.
- 54-2610. Sales of swine; contract voidable by seller.
- 54-2611. Sales of swine; recovery of damages.
- 54-2612. Sales of swine; violation; penalty.
- 54-2613. Sales of swine; packer; reporting requirements.
- 54-2614. Sales of swine; reports available to public; department; duty.
- 54-2615. Sales of swine; packer; failure to make reports; false information; penalties.
- 54-2616. Sales of swine; enforcement of provisions; restraining order.
- 54-2617. Sales of cattle; packer; prohibited acts.
- 54-2618. Sales of cattle; contracts allowed; conditions.
- 54-2619. Sales of cattle; pricing mechanisms; restrictions.
- 54-2620. Sales of cattle; contract voidable by seller.
- 54-2621. Sales of cattle; recovery of damages.
- 54-2622. Sales of cattle; violation; penalty.
- 54-2623. Sales of cattle; packer; reporting requirements.
- 54-2624. Sales of cattle; reports available to public; department; duty.
- 54-2625. Sales of cattle; packer; failure to make reports; false information; penalties.
- 54-2626. Sales of cattle; enforcement of provisions; restraining order.
- 54-2627. Fee per animal unit; department assess.
- 54-2627.01. Preemption by federal Livestock Mandatory Reporting Act of 1999; legislative findings; purpose of act; director; duties.
- 54-2628. Competitive Livestock Markets Cash Fund; created; use; investment.
- 54-2629. Rules and regulations.
- 54-2630. Attorney General; enforcement powers.
- 54-2631. Attorney General; reciprocal agreements; authorized.

**54-2601 Act, how cited.**

Sections 54-2601 to 54-2631 shall be known and may be cited as the Competitive Livestock Markets Act.

**Source:** Laws 1999, LB 835, § 1; Laws 2006, LB 856, § 25; Laws 2016, LB176, § 1.

**54-2602 Terms, defined.**

For purposes of the Competitive Livestock Markets Act:

- (1) Animal unit means one head of cattle, three calves under four hundred fifty pounds, or five swine;
- (2) Contract swine operation means a livestock operation in which swine owned or controlled by a packer are produced according to a written agreement that does not contain a confidentiality clause and that is agreed to by the packer and a person other than the packer who owns, leases, or holds a legal interest in the livestock operation;
- (3) Department means the Department of Agriculture;
- (4) Director means the Director of Agriculture or his or her designee;
- (5) Livestock means live cattle or swine;
- (6) Livestock operation means a location, including buildings, land, lots, yard corrals, and improvements, adapted to and utilized for the purpose of feeding, keeping, or otherwise providing for the care and maintenance of livestock;
- (7) Packer means a person, or agent of such person, engaged in the business of slaughtering livestock in Nebraska in excess of one hundred fifty thousand animal units per year; and
- (8) Person includes individuals, firms, associations, limited liability companies, and corporations and officers or limited liability company members thereof.

**Source:** Laws 1999, LB 835, § 2; Laws 2016, LB176, § 2.

**54-2603 Repealed. Laws 2016, LB176, § 7.**

**54-2604 Packers; acts prohibited.**

- (1) Except as provided in subsection (2) of this section, a packer shall not:
  - (a) Directly or indirectly own, control, or operate a livestock operation in this state; or
  - (b) Directly or indirectly be engaged in the ownership, keeping, or feeding of livestock, other than temporary ownership, keeping, and feeding not to exceed fourteen days which is necessary and incidental to, and immediately prior to, the process of slaughter.
- (2) Subdivision (1)(b) of this section does not apply to the ownership, keeping, or feeding of swine by a packer at one or more contract swine operations in this state if the packer does not own, keep, or feed swine in this state except for the purpose of the slaughtering of swine or the manufacturing or preparation of carcasses of swine or goods originating from the carcasses in one or more processing facilities owned or controlled by the packer. Any agreement that establishes such a contract swine operation shall be subject to section 54-2604.01.
- (3) For purposes of this section, indirectly own, control, or operate a livestock operation and indirectly be engaged in the ownership, keeping, or feeding of livestock includes:
  - (a) Receiving the net revenue or a share of the net revenue derived from a livestock operation or from a person who contracts for the care and feeding of livestock in this state, unless the packer is not involved in the management of the livestock operation;

(b) Assuming a morbidity or mortality production risk if the livestock are fed or otherwise maintained as part of a livestock operation in this state, unless the packer is not involved in the management of the livestock operation; and

(c) Loaning money for or guaranteeing, acting as a surety for, or otherwise financing a livestock operation in this state or a person who contracts for the care and feeding of livestock in this state. For purposes of this subdivision, loaning money for or guaranteeing, acting as a surety for, or otherwise financing a livestock operation does not include executing a contract for the purchase of livestock by a packer, including, but not limited to, forward contracts, marketing agreements, long-term arrangements, formula arrangements, other noncash sales arrangements, contracts that contain a ledger balance unsecured by collateral of the debtor or other price-risk-sharing arrangements, or providing an open account or loan unsecured by collateral of the debtor or a ledger balance or loan secured by collateral of the debtor so long as the amount due from the debtor does not exceed one million dollars.

**Source:** Laws 1999, LB 835, § 4; Laws 2016, LB176, § 3.

**54-2604.01 Swine production contract; contents; cancellation; procedure; violations; Attorney General; duties; fine; Department of Agriculture; rules and regulations.**

(1) For purposes of this section:

(a) Swine production contract means the agreement between a packer and a swine production contract grower which establishes a contract swine operation; and

(b) Swine production contract grower means the person who enters into a swine production contract with a packer to establish a contract swine operation.

(2) A swine production contract grower may cancel a swine production contract by mailing a cancellation notice to the packer not later than the later of:

(a) Three business days after the date on which the swine production contract is executed; or

(b) Any cancellation date specified in the swine production contract.

(3) A swine production contract shall clearly disclose:

(a) The right of the swine production contract grower to cancel the swine production contract;

(b) The method by which the swine production contract grower may cancel the swine production contract; and

(c) The deadline for canceling the swine production contract.

(4) A swine production contract shall contain on the first page a statement identified as the Additional Capital Investments Disclosure Statement, which shall conspicuously state that additional large capital investments may be required of the swine production contract grower during the term of the swine production contract. This subsection shall apply to any swine production contract entered into, amended, altered, modified, renewed, or extended after July 21, 2016.

(5) The forum for resolving any dispute among the parties to a swine production contract shall be a court of competent jurisdiction within the state

in which the principal part of the performance takes place under the swine production contract.

(6) Any swine production contract that contains a provision requiring the use of arbitration to resolve any controversy that may arise under the contract shall contain a provision that allows a swine production contract grower, prior to entering the contract, to decline to be bound by the arbitration provision.

(7) Any swine production contract grower that declines a requirement of arbitration pursuant to subsection (6) of this section has the right to seek to resolve any controversy that may arise under the swine production contract using arbitration if, after the controversy arises, both parties consent in writing to use arbitration to settle the controversy.

(8) Subsections (6) and (7) of this section shall apply to any swine production contract entered into, amended, altered, modified, renewed, or extended after July 21, 2016.

(9) A swine production contract shall not contain any obligations of confidentiality, or any other provisions, that limit a swine production contract grower from sharing and reviewing the swine production contract with anyone, including, but not limited to, his or her business partners, employees, or agents, his or her financial and legal advisors, and his or her spouse and family members.

(10) Whenever the Attorney General has reason to believe that a packer is violating this section, he or she shall commence an action in district court to enjoin the violation. The court, upon determination that such packer is in violation of this section, shall assess the packer a fine of not less than one thousand dollars for each day of violation.

(11) The Department of Agriculture may adopt and promulgate such rules and regulations regarding swine production contracts as are needed to further protect swine production contract growers from unfair business practices and coercion.

**Source:** Laws 2016, LB176, § 4.

**54-2605 Violations by packer; enforcement; penalty.**

Whenever the Attorney General has reason to believe that a packer is violating section 54-2604, he or she shall commence an action in district court to enjoin the livestock operation. The court, upon determination that such packer is in violation of section 54-2604, shall order such livestock to be removed and sold and shall assess the packer a fine of not less than one thousand dollars for each day of violation.

**Source:** Laws 1999, LB 835, § 5.

**54-2606 Packer violation; proceeds of livestock sale; fines; distribution.**

The proceeds from any livestock ordered to be sold pursuant to section 54-2605 shall not be distributed until all fines and costs associated with such action have been paid. All money collected as a fine shall be remitted to the State Treasurer for credit to the permanent school fund. All fines levied under this section remaining 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 violation occurred.

**Source:** Laws 1999, LB 835, § 6.

**54-2607 Sales of swine; packers; prohibited acts.**

Except as provided in sections 54-2608 and 54-2609, it is unlawful for a packer purchasing or entering into a contract to purchase swine to pay or enter into a contract to pay different prices to the sellers of the swine. This section shall not be construed to mean that a price or payment method must remain fixed throughout any marketing period.

**Source:** Laws 1999, LB 835, § 7.

**54-2608 Sales of swine; authorized; when.**

Section 54-2607 does not apply to any direct, spot, or cash purchase of swine if the following requirements are met:

(1) The difference in price is based on: (a) A payment method specifying prices paid for criteria relating to carcass merit; or (b) actual and quantifiable costs related to transporting and acquiring the swine by the packer; and

(2) After making the payment to a seller, the packer reports the payment information required under section 54-2613, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs.

**Source:** Laws 1999, LB 835, § 8.

**54-2609 Sales of swine; contracts allowed; conditions.**

Section 54-2607 does not apply to any contract to purchase swine at a certain date or time if the following requirements are met:

(1) The difference in price is based on: (a) A payment method specifying prices paid for criteria relating to carcass merit; or (b) actual and quantifiable costs related to transporting and acquiring the swine by the packer;

(2) The packer reports the payment information required under section 54-2613, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs;

(3) The packer reports the information required under section 54-2613, including the price to be paid for swine to be delivered on specified delivery dates or times; and

(4) An offer to enter into a contract for the delivery of swine, according to the same terms and conditions, is made to other sellers.

**Source:** Laws 1999, LB 835, § 9.

**54-2610 Sales of swine; contract voidable by seller.**

Any contract made by a packer in violation of section 54-2607 is voidable by the seller.

**Source:** Laws 1999, LB 835, § 10.

**54-2611 Sales of swine; recovery of damages.**

A seller may bring an action against any packer violating section 54-2607 to recover damages sustained by reason of such violation.

**Source:** Laws 1999, LB 835, § 11.

**54-2612 Sales of swine; violation; penalty.**

Any packer acting in violation of section 54-2607 is guilty of a Class IV misdemeanor and shall be fined five hundred dollars per violation.

**Source:** Laws 1999, LB 835, § 12.

**54-2613 Sales of swine; packer; reporting requirements.**

Beginning February 15, 2000, a packer shall, two times each day during which swine are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all swine that are purchased in the cash, spot, or direct market since the last report. A packer shall, one time each day during which swine are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all swine that are purchased by contract that day. Such reports shall be completed on forms prepared by the department, in consultation with the agricultural market service livestock news branch, and shall include:

- (1) The cash price paid and the number of swine purchased in the cash, spot, or direct market at price intervals representative of the day's trade;
- (2) The base price paid and premium and discount payment adjustments for quality characteristics including grade, yield, and backfat;
- (3) Base price and premium and discount factors for swine purchased using a formula-based pricing system; and
- (4) The number of swine purchased under contract, in which the date of delivery is set for more than fourteen days after the making of the contract, and the base price to be paid or the formula that will be used to determine the base price to be paid.

The report shall not include information regarding the identity of a seller.

**Source:** Laws 1999, LB 835, § 13.

**54-2614 Sales of swine; reports available to public; department; duty.**

The department shall make report information received under section 54-2613 available to the public in a timely manner to permit the use of the information while it is still relevant.

**Source:** Laws 1999, LB 835, § 14.

**54-2615 Sales of swine; packer; failure to make reports; false information; penalties.**

The failure of a packer to report information to the department as required in section 54-2613 is punishable by a civil penalty not to exceed one thousand dollars for each day that a complete report is not made available to the department. The intentional reporting of false information by a packer in the report to the department required in section 54-2613 is a Class IV misdemeanor.

**Source:** Laws 1999, LB 835, § 15.

**54-2616 Sales of swine; enforcement of provisions; restraining order.**

The Attorney General shall enforce the provisions of sections 54-2607 to 54-2615, and the director shall refer any violations of these provisions to the Attorney General. The Attorney General or any person injured by a violation of

these provisions may bring an action in district court to restrain a packer from violating these provisions.

**Source:** Laws 1999, LB 835, § 16.

**54-2617 Sales of cattle; packer; prohibited acts.**

It is unlawful for a packer to enter into a contract to purchase cattle for slaughter if:

- (1) The contract specifies that the seller is not allowed to report the terms of the contract; or
- (2) The date of delivery of such cattle is not specified.

**Source:** Laws 1999, LB 835, § 17.

**54-2618 Sales of cattle; contracts allowed; conditions.**

Section 54-2617 does not apply to any contract to purchase cattle for slaughter if the following conditions are met:

- (1) The contract to purchase cattle for slaughter specifies the month of delivery and allows the seller to set the week for delivery within such month; and
- (2) The packer reports the contract information as required under section 54-2623, including specified delivery dates or times.

**Source:** Laws 1999, LB 835, § 18.

**54-2619 Sales of cattle; pricing mechanisms; restrictions.**

It is unlawful for a packer to enter into a contract to purchase cattle for slaughter using a formula or grid pricing mechanism if the packer fails to negotiate a base price prior to the cattle being committed or scheduled for slaughter.

**Source:** Laws 1999, LB 835, § 19.

**54-2620 Sales of cattle; contract voidable by seller.**

Any contract to purchase cattle for slaughter that is in violation of section 54-2617 or 54-2619 is voidable by the seller.

**Source:** Laws 1999, LB 835, § 20.

**54-2621 Sales of cattle; recovery of damages.**

A seller may bring an action against any packer violating section 54-2617 or 54-2619 to recover damages sustained by reason of such violation.

**Source:** Laws 1999, LB 835, § 21.

**54-2622 Sales of cattle; violation; penalty.**

Any packer acting in violation of section 54-2617 or 54-2619 shall be guilty of a Class IV misdemeanor and shall be fined five hundred dollars per violation.

**Source:** Laws 1999, LB 835, § 22.

**54-2623 Sales of cattle; packer; reporting requirements.**



Beginning February 15, 2000, a packer shall, two times each day during which cattle are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all cattle that are purchased in the cash, spot, or direct market since the last report. A packer shall, one time each day during which cattle are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all cattle that are purchased by contract that day. Such reports shall be completed on forms prepared by the department, in consultation with the agricultural market service livestock news branch, and shall include:

- (1) The cash price paid and the number of cattle purchased at price intervals representative of the day's trade;
- (2) Quality characteristics, including sex of the cattle, estimated percentage of the meat which will be graded choice or better upon inspection based upon the United States Department of Agriculture official grades, and estimated live weight, as well as premium and discount factors that may apply to these characteristics;
- (3) Base price and premium and discount factors for cattle purchased using a formula or grid pricing mechanism; and
- (4) The delivery month, volume, and applicable basis level for all cattle purchased under basis contract.

The report shall not include information regarding the identity of a seller.

**Source:** Laws 1999, LB 835, § 23.

**54-2624 Sales of cattle; reports available to public; department; duty.**

The department shall make report information received under section 54-2623 available to the public in a timely manner to permit the use of the information while it is still relevant.

**Source:** Laws 1999, LB 835, § 24.

**54-2625 Sales of cattle; packer; failure to make reports; false information; penalties.**

The failure of a packer to report information to the department as required in section 54-2623 is punishable by a civil penalty not to exceed one thousand dollars for each day that a complete report is not made available to the department. The intentional reporting of false information by a packer in the report to the department required in section 54-2623 is a Class IV misdemeanor.

**Source:** Laws 1999, LB 835, § 25.

**54-2626 Sales of cattle; enforcement of provisions; restraining order.**

The Attorney General shall enforce the provisions of sections 54-2617 to 54-2625, and the director shall refer any violations of these provisions to the Attorney General. The Attorney General or any person injured by a violation of these provisions may bring an action in district court to restrain a packer from violating these provisions.

**Source:** Laws 1999, LB 835, § 26.

**54-2627 Fee per animal unit; department assess.**

The department shall assess a fee not to exceed two cents per animal unit reported under sections 54-2613 and 54-2623 as direct-purchased or contract-purchased.

**Source:** Laws 1999, LB 835, § 27.

**54-2627.01 Preemption by federal Livestock Mandatory Reporting Act of 1999; legislative findings; purpose of act; director; duties.**

(1) Sections 54-2607 to 54-2627 are preempted by the federal Livestock Mandatory Reporting Act of 1999, 7 U.S.C. 1635 to 1636h, when such federal act is in effect.

(2) The Legislature finds that the mandatory reporting of price and other terms in negotiated or contract procurement of livestock that has been in place under the federal Livestock Mandatory Reporting Act of 1999 is an important reform of livestock markets that contributes to greater market transparency, enhances the ability of livestock sellers to more competently and confidently market livestock, and lessens the existence of conditions under which market price manipulation and unfair preference or advantage in packer procurement practices can occur. It is a purpose of the Competitive Livestock Markets Act to provide for the continuation of mandatory price reporting for the benefit of Nebraska producers and protection of the integrity of livestock markets in Nebraska in the event of termination of the federal Livestock Mandatory Reporting Act of 1999 and its preemption of similar state price reporting laws as well as to provide for an orderly implementation of the state price reporting system authorized by the Competitive Livestock Markets Act, should Congress fail to reauthorize the federal Livestock Mandatory Reporting Act of 1999.

(3)(a) If Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999 before December 1, 2006, the director shall, on December 1, 2006, or as soon before or after as practicable, prepare a budget and an appropriation request from the General Fund, from the Competitive Livestock Markets Cash Fund, or from other cash funds under the control of the director, for submission to the Legislature in an amount sufficient to enable the department to carry out its duties under sections 54-2607 to 54-2627, and such sections shall become applicable on October 1, 2007.

(b) If, on or after December 1, 2006, Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999, the director shall prepare such budget and appropriation request on or before a date that is twelve calendar months after the date such federal act expires or is terminated, and sections 54-2607 to 54-2627 shall become applicable on the first day of the calendar quarter that is eighteen months after the date such sections are not preempted by the federal act. No General Funds shall be appropriated for implementation of sections 54-2607 to 54-2627 after the date of commencement provided for in this section of reporting of price and other data regarding livestock transactions pursuant to sections 54-2613 and 54-2623. It is the intent of the Legislature that any General Funds appropriated for purposes of this section shall be reimbursed to the General Fund.

**Source:** Laws 2006, LB 856, § 27; Laws 2016, LB176, § 5.

**54-2628 Competitive Livestock Markets Cash Fund; created; use; investment.**

The Competitive Livestock Markets Cash Fund is created. The fund shall be administered by the department. The fund shall consist of investigative and enforcement expense assessments against violators of the Competitive Livestock Markets Act and fees paid by a packer pursuant to section 54-2627. The money in the fund shall be used to defray the investigative, enforcement, and reporting expenses of the department in 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 1999, LB 835, § 28.

**Cross References**

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

**54-2629 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out sections 54-2607 to 54-2628.

**Source:** Laws 1999, LB 835, § 29.

**54-2630 Attorney General; enforcement powers.**

The Attorney General, for the enforcement of the Competitive Livestock Markets Act, shall have the authority to subpoena witnesses, compel their attendance, examine them under oath, and require the production of documents, records, or tangible things deemed relevant to the proper performance of his or her duties. Service of any subpoena shall be made in the manner prescribed by the rules of civil procedure.

**Source:** Laws 1999, LB 835, § 30.

**54-2631 Attorney General; reciprocal agreements; authorized.**

The Attorney General shall have the power and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, federal or state, for the exchange of information on a cooperative basis which may assist in the proper administration of the Competitive Livestock Markets Act.

**Source:** Laws 1999, LB 835, § 31.

**ARTICLE 27**

**SCRAPIE CONTROL AND ERADICATION ACT**

- Section  
 54-2701. Repealed. Laws 2020, LB344, § 82.  
 54-2702. Repealed. Laws 2020, LB344, § 82.  
 54-2703. Repealed. Laws 2020, LB344, § 82.  
 54-2704. Repealed. Laws 2020, LB344, § 82.  
 54-2705. Repealed. Laws 2020, LB344, § 82.  
 54-2706. Repealed. Laws 2020, LB344, § 82.  
 54-2707. Repealed. Laws 2020, LB344, § 82.  
 54-2708. Repealed. Laws 2020, LB344, § 82.  
 54-2709. Repealed. Laws 2020, LB344, § 82.  
 54-2710. Repealed. Laws 2020, LB344, § 82.  
 54-2711. Repealed. Laws 2020, LB344, § 82.  
 54-2712. Repealed. Laws 2020, LB344, § 82.

## Section

- 54-2713. Repealed. Laws 2020, LB344, § 82.
- 54-2714. Repealed. Laws 2020, LB344, § 82.
- 54-2715. Repealed. Laws 2020, LB344, § 82.
- 54-2716. Repealed. Laws 2020, LB344, § 82.
- 54-2717. Repealed. Laws 2020, LB344, § 82.
- 54-2718. Repealed. Laws 2020, LB344, § 82.
- 54-2719. Repealed. Laws 2020, LB344, § 82.
- 54-2720. Repealed. Laws 2020, LB344, § 82.
- 54-2721. Repealed. Laws 2020, LB344, § 82.
- 54-2722. Repealed. Laws 2020, LB344, § 82.
- 54-2723. Repealed. Laws 2020, LB344, § 82.
- 54-2724. Repealed. Laws 2020, LB344, § 82.
- 54-2725. Repealed. Laws 2020, LB344, § 82.
- 54-2726. Repealed. Laws 2020, LB344, § 82.
- 54-2727. Repealed. Laws 2020, LB344, § 82.
- 54-2728. Repealed. Laws 2020, LB344, § 82.
- 54-2729. Repealed. Laws 2020, LB344, § 82.
- 54-2730. Repealed. Laws 2020, LB344, § 82.
- 54-2731. Repealed. Laws 2020, LB344, § 82.
- 54-2732. Repealed. Laws 2020, LB344, § 82.
- 54-2733. Repealed. Laws 2020, LB344, § 82.
- 54-2734. Repealed. Laws 2020, LB344, § 82.
- 54-2735. Repealed. Laws 2020, LB344, § 82.
- 54-2736. Repealed. Laws 2020, LB344, § 82.
- 54-2737. Repealed. Laws 2020, LB344, § 82.
- 54-2738. Repealed. Laws 2020, LB344, § 82.
- 54-2739. Repealed. Laws 2020, LB344, § 82.
- 54-2740. Repealed. Laws 2020, LB344, § 82.
- 54-2741. Repealed. Laws 2020, LB344, § 82.
- 54-2742. Repealed. Laws 2020, LB344, § 82.
- 54-2743. Repealed. Laws 2020, LB344, § 82.
- 54-2744. Repealed. Laws 2020, LB344, § 82.
- 54-2745. Repealed. Laws 2020, LB344, § 82.
- 54-2746. Repealed. Laws 2020, LB344, § 82.
- 54-2747. Repealed. Laws 2020, LB344, § 82.
- 54-2748. Repealed. Laws 2020, LB344, § 82.
- 54-2749. Repealed. Laws 2020, LB344, § 82.
- 54-2750. Repealed. Laws 2020, LB344, § 82.
- 54-2751. Repealed. Laws 2020, LB344, § 82.
- 54-2752. Repealed. Laws 2020, LB344, § 82.
- 54-2753. Repealed. Laws 2020, LB344, § 82.
- 54-2754. Repealed. Laws 2020, LB344, § 82.
- 54-2755. Repealed. Laws 2020, LB344, § 82.
- 54-2756. Repealed. Laws 2020, LB344, § 82.
- 54-2757. Scrapie Control Cash Fund; created; use; investment; termination.
- 54-2758. Repealed. Laws 2020, LB344, § 82.
- 54-2759. Repealed. Laws 2020, LB344, § 82.
- 54-2760. Repealed. Laws 2020, LB344, § 82.
- 54-2761. Repealed. Laws 2020, LB344, § 82.

**54-2701 Repealed. Laws 2020, LB344, § 82.**

**54-2702 Repealed. Laws 2020, LB344, § 82.**

**54-2703 Repealed. Laws 2020, LB344, § 82.**

**54-2704 Repealed. Laws 2020, LB344, § 82.**

**54-2705 Repealed. Laws 2020, LB344, § 82.**

54-2706 Repealed. Laws 2020, LB344, § 82.  
54-2707 Repealed. Laws 2020, LB344, § 82.  
54-2708 Repealed. Laws 2020, LB344, § 82.  
54-2709 Repealed. Laws 2020, LB344, § 82.  
54-2710 Repealed. Laws 2020, LB344, § 82.  
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54-2712 Repealed. Laws 2020, LB344, § 82.  
54-2713 Repealed. Laws 2020, LB344, § 82.  
54-2714 Repealed. Laws 2020, LB344, § 82.  
54-2715 Repealed. Laws 2020, LB344, § 82.  
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54-2719 Repealed. Laws 2020, LB344, § 82.  
54-2720 Repealed. Laws 2020, LB344, § 82.  
54-2721 Repealed. Laws 2020, LB344, § 82.  
54-2722 Repealed. Laws 2020, LB344, § 82.  
54-2723 Repealed. Laws 2020, LB344, § 82.  
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54-2726 Repealed. Laws 2020, LB344, § 82.  
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54-2732 Repealed. Laws 2020, LB344, § 82.  
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54-2735 Repealed. Laws 2020, LB344, § 82.  
54-2736 Repealed. Laws 2020, LB344, § 82.

**54-2737 Repealed. Laws 2020, LB344, § 82.**

**54-2738 Repealed. Laws 2020, LB344, § 82.**

**54-2739 Repealed. Laws 2020, LB344, § 82.**

**54-2740 Repealed. Laws 2020, LB344, § 82.**

**54-2741 Repealed. Laws 2020, LB344, § 82.**

**54-2742 Repealed. Laws 2020, LB344, § 82.**

**54-2743 Repealed. Laws 2020, LB344, § 82.**

**54-2744 Repealed. Laws 2020, LB344, § 82.**

**54-2745 Repealed. Laws 2020, LB344, § 82.**

**54-2746 Repealed. Laws 2020, LB344, § 82.**

**54-2747 Repealed. Laws 2020, LB344, § 82.**

**54-2748 Repealed. Laws 2020, LB344, § 82.**

**54-2749 Repealed. Laws 2020, LB344, § 82.**

**54-2750 Repealed. Laws 2020, LB344, § 82.**

**54-2751 Repealed. Laws 2020, LB344, § 82.**

**54-2752 Repealed. Laws 2020, LB344, § 82.**

**54-2753 Repealed. Laws 2020, LB344, § 82.**

**54-2754 Repealed. Laws 2020, LB344, § 82.**

**54-2755 Repealed. Laws 2020, LB344, § 82.**

**54-2756 Repealed. Laws 2020, LB344, § 82.**

**54-2757 Scrapie Control Cash Fund; created; use; investment; termination.**

The Scrapie Control Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be utilized for the purpose of carrying out the Scrapie Control and Eradication 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. The fund terminates on November 14, 2020, and the State Treasurer shall transfer any money in the fund on such date to the Animal Health and Disease Control Cash Fund.

**Source:** Laws 2003, LB 158, § 57; Laws 2020, LB344, § 78.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-2758 Repealed. Laws 2020, LB344, § 82.**

**54-2759 Repealed. Laws 2020, LB344, § 82.**

**54-2760 Repealed. Laws 2020, LB344, § 82.**

**54-2761 Repealed. Laws 2020, LB344, § 82.**

**ARTICLE 28  
LIVESTOCK PRODUCTION**

Section

- 54-2801. Legislative findings; act, how cited.  
 54-2802. Director of Agriculture; duties; designation of livestock friendly county; process; county board; powers.  
 54-2803. Grant program; applications; purposes.  
 54-2804. Livestock Growth Act Cash Fund; created; use; investment.  
 54-2805. Rules and regulations.

**54-2801 Legislative findings; act, how cited.**

(1) Sections 54-2801 to 54-2805 shall be known and may be cited as the Livestock Growth Act.

(2) The Legislature finds that livestock production has traditionally served a significant role in the economic vitality of rural areas of the state and in the state's overall economy and that the growth and vitality of the state's livestock sector are critical to the continued prosperity of the state and its citizens. The Legislature further finds that a public interest exists in assisting efforts of the livestock industry and rural communities to preserve and enhance livestock development as an essential element of economic development and that a need exists to provide aid, resources, and assistance to rural communities and counties seeking opportunities in the growth of livestock production. It is the intent of the Legislature to seek reasonable means to nurture and support the livestock sector of this state.

**Source:** Laws 2003, LB 754, § 1; Laws 2015, LB175, § 1.

**54-2802 Director of Agriculture; duties; designation of livestock friendly county; process; county board; powers.**

(1) The Director of Agriculture shall establish a process, including criteria and standards, to recognize and assist efforts of counties to maintain or expand their livestock sector. A county that meets the criteria may apply to the director to be designated a livestock friendly county. A county may remove itself from the process at any time. Such criteria and standards may include, but are not limited to, the following factors: Consideration of the diversity of activities currently underway or being initiated by counties; a formal expression of interest by a county board, by a duly enacted resolution following a public hearing, in developing the livestock production and processing sectors of such county's economy; an assurance that such county intends to work with all other governmental jurisdictions within its boundaries in implementing livestock development within the county; flexible and individual treatment allowing each county to design its own development program according to its own timetable; and a commitment to compliance with the Livestock Waste Management Act.

(2) The designation of any county or counties as a livestock friendly county shall not be an indication nor shall it suggest that any county that does not seek or obtain such a designation is not friendly to livestock production.

(3) In order to assist any county with information and technology, the Department of Agriculture shall establish a resource database to provide, upon written request of the county zoning authority or county board, information sources that may be useful to the county in evaluating and crafting livestock facility conditional use permits that meet the objectives of the county and the livestock producer applicant.

(4) Nothing in this section shall prohibit or prevent any county board from adopting a resolution that designates the county a livestock friendly county.

**Source:** Laws 2003, LB 754, § 2; Laws 2015, LB175, § 2.

**Cross References**

Livestock Waste Management Act, see section 54-2416.

**54-2803 Grant program; applications; purposes.**

(1) From funds available in the Livestock Growth Act Cash Fund, the Director of Agriculture may administer a grant program to assist counties designated by the director as livestock friendly counties pursuant to section 54-2802 in livestock development planning and associated public infrastructure improvements. The director shall receive applications submitted by county boards or county planning authorities for assistance under this section and award grants for any of the following eligible purposes:

(a) Strategic planning to accommodate and encourage investment in livestock production, including one or more of the following activities:

(i) Reviewing zoning and land-use regulations;

(ii) Evaluating workforce availability, educational, institutional, public infrastructure, marketing, transportation, commercial service, natural resource, and agricultural assets, and needs of the county and surrounding areas to support livestock development;

(iii) Identifying livestock development goals and opportunities for the county;

(iv) Identifying and evaluating a location or locations suitable for placement of livestock production facilities; and

(v) Developing a marketing strategy to promote and attract investment in new or expanded livestock production and related livestock service and marketing businesses within the county; and

(b) Improvements to public infrastructure to accommodate one or more livestock development projects, including modifications to roads and bridges, drainage, and sewer and water systems. An application for a grant under this subdivision shall identify specific infrastructure improvements relating to a project for the establishment, expansion, or relocation of livestock production to which the grant funds would be applied and shall include a copy of the county conditional use permit issued for the livestock operation if required by county zoning regulations.

(2) A grant award under subdivision (1)(a) of this section shall not exceed fifteen thousand dollars. A grant award under subdivision (1)(b) of this section shall not exceed one-half of the unobligated balance of the Livestock Growth Act Cash Fund or two hundred thousand dollars, whichever is less.

**Source:** Laws 2015, LB175, § 3.

**54-2804 Livestock Growth Act Cash Fund; created; use; investment.**



The Livestock Growth Act Cash Fund is created. The fund may be used to carry out the Livestock Growth Act. The State Treasurer shall credit to the fund any funds transferred or appropriated to the fund by the Legislature and funds received as gifts or grants or other private or public funds obtained for the purposes of 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 2015, LB175, § 4.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-2805 Rules and regulations.**

The Department of Agriculture may adopt and promulgate rules and regulations to carry out the Livestock Growth Act.

**Source:** Laws 2015, LB175, § 5.

**ARTICLE 29**

**ANIMAL HEALTH AND DISEASE CONTROL ACT**

Section

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**§ 54-2901****LIVESTOCK**

## Section

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**54-2901 Act, how cited.**

Sections 54-2901 to 54-2957 shall be known and may be cited as the Animal Health and Disease Control Act.

**Source:** Laws 2020, LB344, § 1.

**54-2902 Definitions, where found.**

For purposes of sections 54-753.05 and 54-797 to 54-7,103 and the Animal Health and Disease Control Act, unless the context otherwise requires, the definitions found in sections 54-2903 to 54-2938 shall be used.

**Source:** Laws 2020, LB344, § 2.

**54-2903 Accredited veterinarian, defined.**

Accredited veterinarian means a veterinarian duly licensed by the State of Nebraska and approved by the administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

**Source:** Laws 2020, LB344, § 3.

**54-2904 Affected animal, herd, or flock, defined.**

Affected animal, herd, or flock means an animal, herd, or flock which contains an animal infected with or exposed to a dangerous disease.

**Source:** Laws 2020, LB344, § 4.

**54-2905 Affected premises, defined.**

Affected premises means premises upon which is or was located an affected animal, herd, or flock or suspected affected animal, herd, flock, or disease agent of a dangerous disease.

**Source:** Laws 2020, LB344, § 5.

**54-2906 Animal, defined.**

Animal means all vertebrate members of the animal kingdom except humans or wild animals at large.

**Source:** Laws 2020, LB344, § 6.

**54-2907 Approved laboratory, defined.**

Approved laboratory means an animal disease diagnostic laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians to conduct animal disease testing.

**Source:** Laws 2020, LB344, § 7.

**54-2908 Cattle, defined.**

Cattle means all domestic bovine animals, including beef cattle, dairy cattle, and bison.

**Source:** Laws 2020, LB344, § 8.

**54-2909 Certificate of veterinary inspection, defined.**

Certificate of veterinary inspection means a legible document, paper, or electronic submission, issued by an accredited veterinarian at the point of origin of an animal movement which meets federal and state requirements for interstate or intrastate movement of animals. Certificate of veterinary inspection does not include Form 7001 of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

**Source:** Laws 2020, LB344, § 9.

**54-2910 Controlled movement, defined.**

Controlled movement means a temporary movement restriction controlling the movement of animals, animal products, and fomites into, within, and out of a regulatory control area where affected animals, herds, or flocks are or were located.

**Source:** Laws 2020, LB344, § 10.

**54-2911 Dangerous disease, defined.**

Dangerous disease means an infectious, contagious, or otherwise transmissible disease, infestation, or exposure which has the potential for rapid spread,

serious economic impact, or serious threat to livestock health, and is of major importance in the trade of livestock and livestock products.

**Source:** Laws 2020, LB344, § 11.

**54-2912 Department, defined.**

Department means the Department of Agriculture.

**Source:** Laws 2020, LB344, § 12.

**54-2913 Director, defined.**

Director means the Director of Agriculture or his or her designee.

**Source:** Laws 2020, LB344, § 13.

**54-2914 Domesticated cervine animal, defined.**

Domesticated cervine animal means any elk, deer, or other member of the family cervidae legally obtained from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state in which such facility is located and such animal is raised in a confined area.

**Source:** Laws 2020, LB344, § 14.

**54-2915 Embargo, defined.**

Embargo means a temporary movement restriction of any affected or suspect animal, herd, or flock.

**Source:** Laws 2020, LB344, § 15.

**54-2916 Exposed, defined.**

Exposed means an animal, herd, flock, or premises which has come into contact with a disease agent which affects livestock.

**Source:** Laws 2020, LB344, § 16.

**54-2917 Foreign animal or transboundary disease, defined.**

Foreign animal or transboundary disease means a disease not endemic to the United States or which has been eradicated in the United States, and which is of significant economic, trade, and food security importance.

**Source:** Laws 2020, LB344, § 17.

**54-2918 Herd or flock, defined.**

Herd or flock means one or more groups of livestock under common ownership or supervision, maintained on common ground for any purpose, or which are geographically separated but which have an interchange of livestock or equipment.

**Source:** Laws 2020, LB344, § 18.

**54-2919 Herd or flock management plan, defined.**

Herd or flock management plan means a written disease management plan that is designed by the herd owner or the owner's representative in conjunction with the State Veterinarian or federal area veterinarian in charge to eradicate

or reduce exposure to a dangerous disease from an affected herd or flock. Such plan may require additional disease management practices deemed necessary by the State Veterinarian to eradicate such disease.

**Source:** Laws 2020, LB344, § 19.

**54-2920 Infected or positive animal, herd, or flock, defined.**

Infected or positive animal, herd, or flock means an animal that has tested positive to an official test.

**Source:** Laws 2020, LB344, § 20.

**54-2921 Livestock, defined.**

Livestock means cattle, swine, sheep, horses, mules, donkeys, goats, domesticated cervine animals, ratite birds, poultry, llamas, and alpacas.

**Source:** Laws 2020, LB344, § 21.

**54-2922 Negative animal, herd, or flock, defined.**

Negative animal, herd, or flock means any animal, herd, or flock which has been tested and found negative to an official test.

**Source:** Laws 2020, LB344, § 22.

**54-2923 Official test, defined.**

Official test means a diagnostic test approved by USDA/APHIS/VS or the department for determining the presence or absence of a program disease.

**Source:** Laws 2020, LB344, § 23.

**54-2924 Permit for entry or permit, defined.**

Permit for entry or permit means a pre-movement authorization for entry into the State of Nebraska obtained from the department which states the conditions under which the animal movement may be made and the location where the animal or animals are going and includes a permit authorization number which is required to be recorded on the certificate of veterinary inspection.

**Source:** Laws 2020, LB344, § 24.

**54-2925 Person, defined.**

Person means any individual, governmental entity, corporation, society, firm, association, partnership, limited liability company, joint-stock company, association, or any other corporate body or legal entity.

**Source:** Laws 2020, LB344, § 25.

**54-2926 Poultry, defined.**

Poultry means domesticated birds that serve as a source of eggs or meat and includes, but is not limited to, chickens, turkeys, ducks, and geese.

**Source:** Laws 2020, LB344, § 26.

**54-2927 Premises, defined.**

Premises means land, buildings, vehicles, equipment, pens, holding facilities, and grounds upon which an animal, herd, or flock is or was, housed, kept, located, grazed, or transported.

**Source:** Laws 2020, LB344, § 27.

**54-2928 Program disease, defined.**

Program disease means a dangerous disease for which specific state or federal legislation exists for disease control or eradication, or is classified as a program disease by the department or USDA/APHIS/VS.

**Source:** Laws 2020, LB344, § 28.

**54-2929 Program disease activity or surveillance, defined.**

Program disease activity or surveillance means determining the presence, control, eradication, surveillance, or monitoring of program diseases and may include, but is not limited to, testing, taking of diagnostic samples, treating, vaccinating, monitoring, or surveillance of any animals, affected animals, or suspected affected animals or any premises, affected premises, or suspected affected premises.

**Source:** Laws 2020, LB344, § 29.

**54-2930 Program standards, defined.**

Program standards means the supplemental guidelines and uniform methods and rules adopted and approved by USDA/APHIS/VS for further clarification of established procedures for the regulation, control, eradication, and enforcement of livestock program diseases.

**Source:** Laws 2020, LB344, § 30.

**54-2931 Quarantine, defined.**

Quarantine means a restriction imposed on animal movement, premises, or regulated articles issued by the department.

**Source:** Laws 2020, LB344, § 31.

**54-2932 Ratite bird, defined.**

Ratite bird means any ostrich, emu, rhea, kiwi, or cassowary.

**Source:** Laws 2020, LB344, § 32.

**54-2933 Regulated article, defined.**

Regulated article means any item capable of transmitting a dangerous disease including conveyances, equipment, feed, or any other item established by the department.

**Source:** Laws 2020, LB344, § 33.

**54-2934 Responder or suspect, defined.**

Responder or suspect means any animal which exhibits a response to an official test, and such animal is classified as a responder or suspect by the testing veterinarian or laboratory.

**Source:** Laws 2020, LB344, § 34.

**54-2935 Sale, defined.**

Sale means a sale, lease, loan, trade, barter, or gift.

**Source:** Laws 2020, LB344, § 35.

**54-2936 State Veterinarian, defined.**

State Veterinarian means the veterinarian appointed pursuant to section 81-202 or his or her designee, subordinate to the director.

**Source:** Laws 2020, LB344, § 36.

**54-2937 Trace or tracing, defined.**

Trace or tracing means the epidemiological investigative process of determining the origin and movements of animals, animal products, and possible vectors that may be involved in the spread or transmissibility of a disease agent.

**Source:** Laws 2020, LB344, § 37.

**54-2938 USDA/APHIS/VS, defined.**

USDA/APHIS/VS means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services.

**Source:** Laws 2020, LB344, § 38.

**54-2939 Legislative findings; department; powers.**

The Legislature finds and declares it is the policy of this state that animal health and disease control are essential to the livestock industry and the health of the economy of Nebraska. The purpose of the Animal Health and Disease Control Act is to further the best interests of Nebraska's livestock industry and to grow Nebraska agriculture. In carrying out its duty to protect the health of Nebraska's livestock, the department may use USDA/APHIS/VS program standards to determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous diseases among livestock and transmissible from other animals to livestock.

**Source:** Laws 2020, LB344, § 39.

**54-2940 Animal Health and Disease Control Act and Exotic Animal Auction or Exchange Venue Act; department; powers.**

In carrying out its duties to prevent, suppress, control, and eradicate dangerous diseases the department may:

(1) Issue quarantines to any person or public or private premises within the state where an affected animal, suspected affected animal, or regulated article is or was located, and upon any animal imported into Nebraska in violation of the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, and any importation rules or regulations until such quarantine is released by the State Veterinarian. Whenever additional animals are placed within a quarantined premises or area, such quarantine may be amended accordingly by the department. Births and death loss shall be included on inventory documentation pursuant to the quarantine;

(2) Regulate or prohibit animal or regulated article movement into, within, or through the state through quarantines, controlled movement orders, importation orders, or embargoes as deemed necessary by the State Veterinarian;

(3) Require an affected animal or suspected affected animal to be (a) euthanized, detained, slaughtered, or sold for immediate slaughter at a federally inspected slaughter establishment or (b) inspected, tested, treated, subjected to an epidemiological investigation, monitored, or vaccinated. The department may require tested animals to be identified by an official identification eartag. Costs for confinement, restraint, and furnishing the necessary assistance and facilities for such activities shall be the responsibility of the owner or custodian of the animal;

(4) Seek an emergency proclamation by the Governor in accordance with section 81-829.40 when deemed appropriate. All state agencies and political subdivisions of the state shall cooperate with the implementation of any emergency procedures and measures developed pursuant to such proclamation;

(5)(a) Access records or animals and enter any premises related to the purposes of the Animal Health and Disease Control Act or the Exotic Animal Auction or Exchange Venue Act without being subject to any action for trespass or reasonable damages if reasonable care is exercised; and

(b) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 if any person refuses to allow the department access or entry as authorized under this subdivision;

(6) Adopt and promulgate rules and regulations to enforce and effectuate the general purpose and provisions of the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, and any other provisions the department deems necessary for carrying out its duties under such acts including:

(a) Standards for program diseases to align with USDA/APHIS/VS program standards;

(b) Provisions for maintaining a livestock disease reporting system;

(c) Procedures for establishing and maintaining accredited, certified, validated, or designated disease-free animals, herds, or flocks;

(d) In consultation with the Department of Environment and Energy and the Department of Health and Human Services, best management practices for the disposal of carcasses of dead livestock;

(e) In consultation with the Department of Environment and Energy and the University of Nebraska, operating procedures governing composting of livestock carcasses;

(f) Recommendations of where and how any available federal funds and state personnel and materials are to be allocated for the purpose of program disease activities; and

(g) Provisions for secure food supply plans to ensure the continuity of business is maintained during a foreign animal or transboundary disease outbreak;

(7) When funds are available, develop a livestock emergency response system capable of coordinating and executing a rapid response to the incursion or potential incursion of a dangerous livestock disease episode which poses a threat to the health of the state's livestock and could cause a serious economic impact on the state, international trade, or both;

(8) Allow animals intended for direct slaughter to move to a controlled feedlot for qualified purposes; and



(9) Approve qualified commuter herd agreements and livestock producer plans and, when appropriate, allow for exceptions to requirements by written compliance agreements.

**Source:** Laws 2020, LB344, § 40.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-2941 Veterinary inspector or agent of the USDA/APHIS/VS; act as agent of the department, when.**

Any veterinary inspector or agent of the USDA/APHIS/VS who has been officially assigned by the United States Department of Agriculture for service in Nebraska may be officially authorized by the department to perform and exercise such powers and duties as may be prescribed by the department, and when so authorized shall have and exercise all rights and powers under the Animal Health and Disease Control Act and the Exotic Animal Auction or Exchange Venue Act as agents of the department.

**Source:** Laws 2020, LB344, § 41.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-2942 Department; animal disease control and eradication responsibilities; cooperate and contract; agreements authorized.**

In carrying out its animal disease control and eradication responsibilities, the department may cooperate and contract with public or private persons and enter into agreements with other state or federal agencies to allow personnel from such agencies to work in Nebraska and to allow department personnel to work in other states or with federal agencies under a cooperative work program.

**Source:** Laws 2020, LB344, § 42.

**54-2943 Failure to carry out program disease activities; department powers and duties; costs; reimbursement; late fee; funds; expenditures authorized.**

(1) Whenever any person fails to carry out program disease activities or other responsibilities required under the Animal Health and Disease Control Act, the department may perform such functions. Upon completion of any such required program disease activities, the department shall determine its actual administrative costs incurred in handling the affected animal, herd, or flock or affected premises and conducting necessary and related activities and notify the owner or custodian in writing. Such owner or custodian shall reimburse the department its actual administrative costs within thirty days following the date of the notice.

(2) Any person failing to reimburse the department shall be assessed a late fee of twenty-five percent of the amount due for each thirty days of delinquent nonpayment up to one hundred percent of the original amount. The purpose of the late fee is to cover administrative costs associated with collecting the amount overdue. All such payments assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Animal Health and Disease Control Cash Fund.

(3) The department may provide funds from the Animal Health and Disease Control Cash Fund to or on behalf of herd owners for program disease activities or any portion thereof in connection with the implementation of the Animal Health and Disease Control Act if funds for such activities or any portion have been appropriated. The department may develop statewide priorities for the expenditure of state funds available for animal disease control and eradication program activities. If funds are not available, the owner of such animal shall continue the program at his or her own expense. A portion of such state funds may be used by the department to pay a portion of the costs of testing done by or for accredited veterinarians if such work is approved by the department.

(4) In administering program disease activities pursuant to this section, the department shall not pay for:

(a) Testing done for a change of ownership at private treaty or at concentration points;

(b) Costs of gathering, confining, and restraining animals subject to testing or costs of providing necessary facilities and assistance;

(c) Costs of testing to qualify or maintain herd accreditation, certification, validation, and monitored status; or

(d) Indemnity for any animal destroyed as a result of being affected with a program disease or other dangerous disease unless funding is specifically appropriated by the Legislature for such purpose.

(5) The department shall not be liable for actual or incidental costs incurred by any person due to departmental actions in enforcing this section, including any action for trespass or damages.

**Source:** Laws 2020, LB344, § 43.

**54-2944 Affected animal, herd, or flock; affected premises; owner or custodian; duties; duty to report**

(1) The owner or custodian of an affected animal, herd, or flock or affected premises may be required by the department to develop a written animal, herd, or flock management plan.

(2) Any affected premises may be required to be cleaned, disinfected, destroyed, or disposed of, or any combination thereof, to prevent transmission and spread of dangerous disease from one premises to another, or from one group of animals to another, when deemed necessary by the State Veterinarian.

(3) 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 person may come under his or her observation, is an affected animal to immediately report such fact, belief, or suspicion to the department or its agent, employee, or appointee.

**Source:** Laws 2020, LB344, § 44.

**54-2945 Bovine trichomoniasis; prohibited acts; duty to report; notice to adjacent landowner or land manager; form or affidavit submitted to department; department; duties; costs.**

(1) 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.

(2) 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 an approved 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.

(3) 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. The department may issue an order for such trichomoniasis positive bull to go directly to slaughter if the owner or custodian of such animal does not comply as set forth in this section.

(4) An owner or manager of any beef or dairy breeding bull for which an approved 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.

(5) 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 section 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. If an owner or a 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 such adjacent landowners or land managers of the diagnosis.

(6) 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 subsection (5) of this section. The department shall determine the scope of adjacent land 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 Animal Health and Disease Control Act Cash Fund.

**Source:** Laws 2020, LB344, § 45.

**54-2946 Dead animal; proper disposal; what constitutes; effect; owner or custodian; duties; sheriff; powers and duties; suspicion of anthrax; owner or custodian; duties; acts prohibited; department powers.**

(1) It is the duty of the owner or custodian of any dead animal to properly dispose of the animal within thirty-six hours after receiving knowledge of the animal's death unless a different timeframe is established in a herd or flock management plan or otherwise allowed by the State Veterinarian. Proper disposal of a dead animal is limited to:

(a) Burial on the premises where such animal died or on any adjacent property under the control of the animal's owner or custodian and coverage to a depth of at least four feet below the surface of the ground except as required in subsection (7) of this section;

(b) Complete incineration;

(c) Composting on the premises where such animal died or on an adjacent property under the ownership and control of the owner or custodian;

(d) Alkaline hydrolysis tissue digestion by a veterinary clinic or laboratory;

(e) Transportation by a licensed rendering establishment or other hauler approved by the State Veterinarian;

(f) Transportation to a veterinary clinic or laboratory for purposes of diagnostic testing; or

(g) Transportation with written permission of the State Veterinarian:

(i) To a rendering establishment licensed under the Nebraska Meat and Poultry Inspection Law;

(ii) To a compost site approved by the State Veterinarian;

(iii) To a facility with a permit to operate as a landfill under the Integrated Solid Waste Management Act so long as the operator of the landfill agrees to accept the dead animal;

(iv) To any facility which lawfully disposes of dead animals; or

(v) As specified in a herd or flock management plan.

(2) A dead animal properly disposed of pursuant to this section is exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

(3) Any vehicle used by the owner or custodian to transport a dead animal shall be constructed in such a manner that the contents are covered and will not fall, leak, or spill from the vehicle. Violation of this subsection is a traffic infraction as defined in section 60-672.

(4) It is hereby made the duty of the sheriff of each county to cause the proper disposal of the carcass of any animal or carcass part remaining unburied or otherwise disposed of after notice from the department that any such carcass has not been properly buried or disposed of in violation of this section. The sheriff may enter any premises where any such carcass is located for the purpose of carrying out this section and may cause each carcass to be properly buried or disposed of on such premises. The county board of commissioners or supervisors shall allow such sums for the services as it may deem reasonable, and such sums shall be paid to the persons rendering the services upon vouchers as other claims against the county are paid. The owner of such animal shall be liable to the county for the expense of such burial or disposal, to be recovered in a civil action, unless the owner pays such expenses within thirty days after notice and demand therefor.

(5) If anthrax is suspected in any animal death, the owner or custodian of the animal or herd shall be responsible to have samples submitted to an approved laboratory for confirmation.

(6) If an animal has or is suspected to have died of anthrax, it shall be unlawful to:

- (a) Transport such animal or animal carcass, except as directed and approved by the department;
  - (b) Use the flesh or organs of such animal or animal carcass for food for livestock or human consumption; or
  - (c) Remove the skin or hide of such animal or animal carcass.
- (7) The disposition of any anthrax-infected animal carcass shall be carried out under the direction of the department. It shall be the duty of the owner or custodian of an animal that has died of anthrax to bury or burn the carcass on the premises where the carcass is found, unless directed otherwise by the State Veterinarian. If such carcass is buried, no portion of the carcass shall be interred closer than six feet from the surface of the ground. The department may direct the owner or custodian of an infected herd to treat the herd and to clean and disinfect the premises in accordance with the herd plan.

**Source:** Laws 2020, LB344, § 46.

**Cross References**

**Integrated Solid Waste Management Act**, see section 13-2001.  
**Nebraska Meat and Poultry Inspection Law**, see section 54-1901.

**54-2947 Pre-entry certificate of veterinary inspection; required; exceptions; permits, required when; prohibited acts; department powers.**

- (1) All animals brought into this state shall be accompanied by a pre-entry certificate of veterinary inspection, except:
- (a) Animals brought directly to slaughter as defined in 9 C.F.R. 86.1 to a recognized slaughtering establishment as defined in 9 C.F.R. 78.1, as such regulations existed on January 1, 2020;
  - (b) Cattle, swine, horses, sheep, and goats brought from the farm or ranch of origin directly to an establishment approved under 9 C.F.R. 71.20, as such regulation existed on January 1, 2020;
  - (c) Poultry under eight weeks of age accompanied by a VS Form 9-3, Report of Sales of Hatching Eggs, Chicks, and Poults, and classified prior to movement into Nebraska as pullorum and typhoid clean or equivalent status pursuant to 9 C.F.R. part 145, the National Poultry Improvement Plan, as such plan existed on January 1, 2020; and
  - (d) Animals moving directly to a veterinary clinic or approved laboratory for diagnosis, treatment, or health examination, except that live animals without a pre-entry certificate of veterinary inspection shall not stay in Nebraska longer than the duration of such diagnosis, treatment, or health examination and during such stay shall be separated from other animals.
- (2) The department may require that a prior entry permit be obtained for animals if it deems such permit is necessary for the protection of the health of domestic animals in the state.
- (3) Except as provided in the Animal Health and Disease Control Act or the Exotic Animal Auction or Exchange Venue Act, no person shall move from a premises any animal which is affected or suspected of being affected with any dangerous disease without first having obtained a permit from the department.
- (4) It shall be unlawful for any person to cause any animal to be diverted from the destination stated on the certificate of veterinary inspection except by written permission of the State Veterinarian.

(5) Any animal which does not qualify for entry into Nebraska pursuant to department rules and regulations may, at the discretion of the State Veterinarian, be subject to the department powers outlined in section 54-2940.

**Source:** Laws 2020, LB344, § 47.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-2948 Livestock; official identification; compliance with federal regulations; device or method; use; device removal, prohibited; exceptions.**

(1) Livestock imported into Nebraska shall comply with federal animal disease traceability requirements for official identification of animals as set forth in 9 C.F.R. part 86, as such part existed on January 1, 2020, which the Legislature hereby adopts by reference. If there is an inconsistency between such federal regulations and the Animal Health and Disease Control Act, and any adopted and promulgated rules or regulations or order issued by the department, the requirements of the act, rules or regulations, or order control.

(2) An official identification device or method may be applied by an animal's owner, the owner's representative, an accredited veterinarian, or an approved tagging site. Official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices is prohibited except at the time of slaughter, upon the death of the animal at any location, when an area veterinarian in charge replaces a device, or as otherwise approved by the department.

**Source:** Laws 2020, LB344, § 48.

**54-2949 Premises registration; animal disease traceability; information; restrictions on disclosure; violations; penalty.**

(1) Any information that a person provides to the department for purposes of premises registration or for voluntary participation in or compliance with animal disease traceability shall not be a public record subject to disclosure under sections 84-712 to 84-712.09. The department and its employees or agents shall not disclose such information to any other person or agency, except when such disclosure:

- (a) Is authorized by the person who provided the information; or
- (b) Is necessary for purposes of disease surveillance or to carry out epidemiological investigations related to incidences of animal disease.

(2) The department may disclose information as authorized by this section subject to any confidentiality requirements that the department determines are appropriate under the circumstances.

(3) Any person who violates this section shall be subject to prosecution for official misconduct pursuant to section 28-924.

(4) Nothing in this section shall be construed to prohibit the department from discussing, reporting, or otherwise disclosing the progress or results of disease surveillance activities or epidemiological investigations related to incidence of animal disease.

**Source:** Laws 2020, LB344, § 49.

**54-2950 Records or reports; requirements.**

Any person subject to the Animal Health and Disease Control Act or any rule or regulation adopted and promulgated under the act shall keep records or reports pertaining to vaccination of animals, herds, or flocks, official diagnostic test results, and movement of affected animals, herds, or flocks infected with, exposed to, or suspected of being infected with or exposed to a program disease for five years. Such person shall keep any other records or make any other reports the department deems necessary to enforce the act.

**Source:** Laws 2020, LB344, § 50.

**54-2951 Vaccine; sale and use restrictions.**

(1) The State Veterinarian may restrict the sale and use of vaccine as he or she deems appropriate.

(2) The sale and use of vaccines which are licensed and approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Center for Veterinary Biologics, shall be used for the vaccination of livestock and such vaccines shall be distributed and administered by an accredited veterinarian licensed to practice in Nebraska.

(3) An affected animal, herd, or flock shall only be vaccinated by or under approval by an accredited veterinarian licensed to practice in Nebraska.

(4) Owners or custodians of animals, herds, or flocks not affected due to anthrax may purchase anthrax vaccine from an accredited veterinarian licensed to practice in Nebraska for purposes of treating such animals.

**Source:** Laws 2020, LB344, § 51.

**54-2952 Waste animal products, defined; feed to animals; unlawful; exceptions.**

As used in this section, waste animal products means all meat or other materials derived in whole or in part from animals that are the result of handling, preparing, cooking, or consumption of human food. For purposes of controlling the spread of dangerous diseases of animals, it shall be unlawful for any person to feed waste animal products to animals except as follows:

(1) The material is regulated and approved as feed under the Commercial Feed Act; and

(2) A person may feed waste animal products to his or her own animals so long as such waste animal products are obtained from the person's own household, and the animals so fed, if consumed, are consumed by no one other than the members of that household.

**Source:** Laws 2020, LB344, § 52.

**Cross References**

**Commercial Feed Act**, see section 54-847.

**54-2953 Violation of Animal Health and Disease Control Act or Exotic Animal Auction or Exchange Venue Act; cease and desist order; administrative fine; injunctions; procedures.**

(1) Whenever the director has reason to believe that any person has violated the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, any rule or regulation adopted and promulgated under such acts, or any order of the director, the director may issue a cease and desist

order. Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal sanctions according to law.

(2) Any notice or order issued pursuant to the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, or any rule or regulation adopted and promulgated under such acts shall be properly served when it is personally served on the alleged violator or when it is sent by certified or regular United States mail to the last-known address of the alleged violator.

(3) A notice of the right to a hearing shall include notice that such right to a hearing may be waived by the alleged violator.

(4) All hearings shall be conducted by the director at the time and place he or she designates. The director shall make findings of fact and conclusions of law based on the complete hearing record and issue an order.

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

(6) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, any rule or regulation adopted and promulgated under such acts, or any order of the director, the engagement in such conduct shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such person in any action which arises under this section.

(7) The department may assess an administrative fine of up to five thousand dollars for any violation of the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, any rule or regulation adopted and promulgated under such acts, or any order of the director. Each violation shall constitute a separate offense. Whenever a violation has occurred, the following shall be considered when determining the amount of any administrative fine:

- (a) The culpability and good faith of the violator and any past violations;
- (b) The seriousness of the violation, including the amount of any actual or potential risk to the health of Nebraska's livestock or livestock industry; and
- (c) The extent to which the violator derived financial gain as a result of committing or permitting the violation, including a determination of the size of the violator's business and the impact of the administrative fine on such business.

(8) The director shall advise the Attorney General of the failure of any person to pay an administrative fine imposed under this section. The Attorney General shall bring an action in the district court of Lancaster County to recover the fine.

(9) The department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, or any rules and regulations adopted and promulgated under either act. It shall be the duty of the Attorney



General or the county attorney of the county in which the violation occurred or is about to occur, when notified by the director of such violation, to pursue appropriate proceedings without delay pursuant to this section.

(10) Nothing in this section shall be construed to require the director to report all acts for prosecution if in the opinion of the director the public interest will best be served through other administrative or civil procedures.

(11) All money collected by the department pursuant to this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2020, LB344, § 53.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-2954 Violation of Animal Health and Disease Control Act or Exotic Animal Auction or Exchange Venue Act; orders of department; arrests; law enforcement officer; county attorney; powers and duties.**

(1) For purposes of this section, law enforcement officer has the same meaning as in section 54-902. Special investigator means a special investigator appointed as a deputy state sheriff and employed by the department for state law enforcement purposes pursuant to section 81-201.

(2) The department or any officer, special investigator, agent, employee, or appointee thereof may request any law enforcement officer to execute the orders of the department, and such law enforcement officer shall have authority to execute the orders of the department.

(3) Any special investigator, or any law enforcement officer whose assistance is requested pursuant to subsection (2) of this section, may arrest any person found violating the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, or any rule or regulation adopted and promulgated under such acts, and such officer or special investigator shall immediately notify the county attorney of such arrest. The county attorney shall prosecute the arrested person according to the law.

**Source:** Laws 2020, LB344, § 54.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-2955 Animal Health and Disease Control Act or Exotic Animal Auction or Exchange Venue Act; embargo or importation order; required herd management plan; violations; penalties.**

(1) Any person who imports livestock or causes livestock to be imported into the State of Nebraska in violation of an embargo or importation order issued by the State Veterinarian shall be guilty of a Class IV felony.

(2) Any person who violates any provision of the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, or any rules and regulations duly adopted and promulgated thereunder, for which no other criminal penalty is provided by such acts, shall be deemed guilty of a Class II misdemeanor.

(3) An owner or custodian of an affected animal, herd, or flock or affected premises who fails to develop a required herd management plan or who fails to follow such a plan is guilty of a Class I misdemeanor.

**Source:** Laws 2020, LB344, § 55.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-2956 Animal Health and Disease Control Act and Exotic Animal Auction or Exchange Venue Act; prohibited acts.**

It shall be unlawful for any person to violate the Animal Health and Disease Control Act and the Exotic Animal Auction or Exchange Venue Act or any rule or regulation adopted and promulgated pursuant to such acts. It is a violation for any person to:

(1) Deny access to any officer, agent, employee, or appointee of the department or offer any resistance to, thwart, or hinder such persons by misrepresentation or concealment;

(2) Violate a controlled movement order or quarantine or remove an animal which has been placed under a controlled movement order or quarantine until such controlled movement order or quarantine is released by the State Veterinarian;

(3) Fail to pay any administrative fine levied pursuant to section 54-2953;

(4) Interfere in any way with or obstruct an officer, agent, employee, or appointee of the department from entering any premises to carry out his or her duties under the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, or any rules or regulations promulgated under such acts, or to interfere in any way with the department in the performance of its duties;

(5) If an owner or a custodian of an affected animal, refuse to perform program disease activities, refuse to perform any other duty required by the State Veterinarian under the Animal Health and Disease Control Act, or refuse to dispose of such affected animal if ordered to do so by the State Veterinarian;

(6) Knowingly harbor, sell, or otherwise dispose of any affected animal or any part thereof except as provided by the Animal Health and Disease Control Act and the rules and regulations adopted and promulgated by the department under the act;

(7) Except by permit issued by the department, bring, cause to be brought, or aid in bringing into this state any animal which he or she knows to be infected with, exposed to, or suspected of being exposed to any dangerous disease, or which he or she knows has originated from a quarantined area, herd, or flock;

(8) Violate a disease control requirement established through livestock herd agreements or health plans, compliance agreements, or controlled feedlot agreements; or

(9) Bring, cause to be brought, or aid in bringing into this state any animal in violation of section 54-2947 or 54-2948 or any rule or regulation adopted and promulgated by the department.

**Source:** Laws 2020, LB344, § 56.

## Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-2957 Animal Health and Disease Control Act Cash Fund; created; use; investment.**

The Animal Health and Disease Control Act Cash Fund is created. The fund shall consist of administrative costs collected and money appropriated or transferred by the Legislature and gifts, grants, costs, or charges received or collected from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Animal Health and Disease Control Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2020, LB344, § 57.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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



**MILITIA**

**CHAPTER 55**  
**MILITIA**

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2. Nebraska State Guard. 55-201 to 55-219.
3. Nebraska Armory Board. Repealed.
4. Nebraska Code of Military Justice. 55-401 to 55-481.
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## MILITIA

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### 55-101 Military code; how cited.

Sections 55-101 to 55-181 shall be known and may be cited as the Military Code.

**Source:** Laws 1929, c. 189, § 1, p. 657; C.S.1929, § 55-105; R.S.1943, § 55-101; Laws 1961, c. 272, § 1, p. 806; Laws 1969, c. 459, § 1, p. 1581; Laws 1971, LB 19, § 1; Laws 1991, LB 313, § 1; Laws 2003, LB 69, § 2; Laws 2010, LB550, § 1.

### 55-102 Military code; contents.

All acts of the Congress of the United States providing for the administration, control, equipment, government, and organization of the armed forces of the United States, together with the rules and regulations promulgated thereunder, now in effect and hereinafter enacted or promulgated may, by appropriate rules and regulations, be adopted by the Governor for the operation and regulation of the military forces and militia of the state insofar as the same are not inconsistent with rights reserved to this state under the constitution of the state and provisions of this code.

**Source:** Laws 1929, c. 189, § 55, p. 673; C.S.1929, § 55-174; R.S.1943, § 55-102; Laws 1953, c. 188, § 1, p. 592.

#### Cross References

“This code”, see section 55-101.

### 55-103 Military code; legislative intent.

The intent of this code is to conform to all constitutional acts and regulations of the United States affecting the same subjects, and all acts of the State of Nebraska shall be construed to effect this purpose.

**Source:** Laws 1929, c. 189, § 2, p. 657; C.S.1929, § 55-107; R.S.1943, § 55-103; Laws 1953, c. 188, § 2, p. 593.

#### Cross References

“This code”, see section 55-101.

### 55-104 Military code; definitions.

As used in Chapter 55, article 1, unless the context otherwise requires:

(1) The term military forces shall mean the National Guard, also called the Nebraska National Guard and also hereinafter referred to as the Army National Guard and the Air National Guard, and in addition thereto the militia when called into active service of this state;

(2) The words active service of the state shall mean service on behalf of this state, in case of public disaster, war, riot, invasion, insurrection, resistance of process, or in case of imminent danger of the occurrence of any of such events, whenever called upon in aid of civil authorities, at encampments whether ordered by state or federal authority, at periods of drill and any other training or service required under state or federal law, regulations or orders, or upon any other duty requiring the entire time of the organization or person; *Provided*, that in no event will active service of the state include in the service of the United States, as defined in this section;

(3) The words in the service of the United States and not in the service of the United States shall mean and be the same as such terms are used in 10 U.S.C.; and

(4) For the purposes of this code, an act is in the line of duty if it is performed pursuant to competent orders or commonly accepted military practices, is not proximately caused by the member's intentional misconduct or gross neglect and occurs during a period of authorized duty or training.

**Source:** Laws 1929, c. 189, § 3, p. 657; C.S.1929, § 55-108; R.S.1943, § 55-104; Laws 1953, c. 188, § 3, p. 593; Laws 1969, c. 459, § 2, p. 1581.

**Cross References**

"This code", see section 55-101.

Active duty for emergency military duty in this section does not include the "additional leave of absence" authorization contemplated in section 55-160. *King v. School Dist. of Omaha*, 197 Neb. 303, 248 N.W.2d 752 (1976).

**55-105 Militia; classes, defined.**

The militia of this state shall be divided into two classes, the active and the reserve militia. The active militia shall consist of the organized and uniformed military forces of the state, which shall be known as the Nebraska National Guard, which includes the Army National Guard and the Air National Guard. The reserve militia shall consist of all those liable to service in the militia, but not serving in the National Guard of this state.

**Source:** Laws 1909, c. 90, § 3, p. 365; R.S.1913, § 3902; C.S.1922, § 3300; C.S.1929, § 55-104; R.S.1943, § 55-107; Laws 1953, c. 188, § 5, p. 595; R.R.S.1943, § 55-107; Laws 1969, c. 459, § 3, p. 1582.

In preparing for and holding annual encampment, Nebraska National Guard is a state governmental agency within meaning of workmen's compensation law, and is liable to employee for compensation for injuries. *Nebraska National Guard v. Morgan*, 112 Neb. 432, 199 N.W. 557 (1924).

**55-106 Militia; persons subject to duty; exemptions.**

All able-bodied citizens and able-bodied persons of foreign birth who have been admitted for permanent residence, who are more than seventeen and less than sixty years of age, and who are residents of this state shall constitute the militia, subject to the following exemptions: (1) Persons exempt by the laws of the United States; (2) members of any regularly organized fire or police department of any city or village and retired firefighters who have served their



full term in any fire company; but no member of the active militia shall be relieved from duty by joining any such fire company or department; (3) judges, justices, and clerks of courts of record; registers of deeds; sheriffs; ministers of the gospel; officers and assistants of hospitals, prisons, and jails; and (4) persons with physical or mental disabilities, persons addicted to the use of narcotic drugs or alcohol, and persons convicted of treason and sedition. All such exempted persons, except those enumerated in subdivisions (1) and (4) of this section, shall be available for military duty in case of war, insurrection, invasion, disaster, or imminent danger thereof.

**Source:** Laws 1909, c. 90, § 1, p. 364; R.S.1913, § 3899; C.S.1922, § 3297; C.S.1929, § 55-101; R.S.1943, § 55-106; Laws 1953, c. 188, § 4, p. 594; R.R.S.1943, § 55-106; Laws 1969, c. 459, § 4, p. 1582; Laws 1974, LB 983, § 1; Laws 1986, LB 1177, § 25.

**Cross References**

Volunteer firefighters exempt during time of peace, see section 35-101.

**55-107 National Guard Reserve.**

An inactive National Guard may be organized and maintained under such rules and regulations as may be prescribed in accordance with the acts of the Congress of the United States.

**Source:** Laws 1929, c. 189, § 8, p. 659; C.S.1929, § 55-113; R.S.1943, § 55-111; Laws 1953, c. 188, § 8, p. 596; R.R.S.1943, § 55-111; Laws 1969, c. 459, § 5, p. 1583.

**55-108 National Guard; organization; federal regulations.**

The organization of the National Guard, including the composition of all units thereof, shall be such as is or may hereafter be prescribed for this state by the United States or by regulations of the Department of the Army and Department of the Air Force.

**Source:** Laws 1929, c. 189, § 6, p. 659; C.S.1929, § 55-111; R.S.1943, § 55-109; Laws 1953, c. 188, § 7, p. 595; R.R.S.1943, § 55-109; Laws 1969, c. 459, § 6, p. 1583.

**55-109 National Guard; units; location.**

The location of units, including headquarters, shall be fixed by the Governor on the recommendation of the Adjutant General.

**Source:** Laws 1929, c. 189, § 7, p. 659; C.S.1929, § 55-112; R.S.1943, § 55-110; Laws 1969, c. 459, § 7, p. 1583.

**55-110 National Guard; uniform; arms; equipment.**

The National Guard of Nebraska shall be uniformed, armed and equipped as provided by the laws or regulations of the United States. Such uniforms, arms and equipment shall be procured and issued by the proper officers as the needs of the service may require and shall be accounted for as the regulations may prescribe.

**Source:** Laws 1929, c. 189, § 17, p. 661; C.S.1929, § 55-122; R.S.1943, § 55-112; Laws 1969, c. 459, § 8, p. 1584.

**55-111 National Guard; units; inspection.**

Inspections of all units and equipment of the National Guard shall be made as required by United States law or regulation. The Adjutant General may make or order such additional inspections as he shall determine necessary.

**Source:** Laws 1929, c. 189, § 24, p. 663; C.S.1929, § 55-130; R.S.1943, § 55-113; Laws 1969, c. 459, § 9, p. 1584.

**55-112 Military property; custody and care; violation; penalty.**

All public property, except when in use in the performance of military duty, shall be kept in armories, or other properly designated places of deposit. It shall be unlawful for any person charged with the care and safety of such public property to allow the same out of his custody except as above specified, and any member of the Nebraska National Guard who shall fail to return any property of the state or the United States to the armory or other place of deposit, when notified by the commanding officer so to do, or who shall wear or use the property of the state or the United States, except under orders of an officer, shall be fined in any sum not exceeding fifty dollars, to be prosecuted and collected as in other cases of misdemeanor.

**Source:** Laws 1909, c. 90, § 34, p. 377; R.S.1913, § 3934; C.S.1922, § 3334; C.S.1929, § 55-161; R.S.1943, § 55-128; Laws 1969, c. 459, § 10, p. 1584.

It was Adjutant General's duty to enter into lease reasonably necessary to provide National Guard armory in which to keep military property. *Omaha Armory Building Co. v. Johnson*, 119 Neb. 29, 226 N.W. 911 (1929).

**55-113 National Guard; drills; encampments; maneuvers.**

Each organization shall assemble for drill and instruction, and participate in encampments, maneuvers and other exercises at such periods as may be prescribed by the Governor in accordance with the requirements of the laws or regulations of the United States.

**Source:** Laws 1929, c. 189, § 23, p. 663; C.S.1929, § 55-129; R.S.1943, § 55-153; Laws 1969, c. 459, § 11, p. 1584.

**55-114 National Guard; annual encampment; attendance.**

The Nebraska National Guard shall encamp for instruction not less than fifteen days annually at such time, place, or places as may be ordered by the Governor. No member of the Nebraska National Guard will be excused from attendance except upon an order of the Adjutant General.

**Source:** Laws 1909, c. 90, § 40, p. 379; R.S.1913, § 3940; C.S.1922, § 3340; C.S.1929, § 55-167; R.S.1943, § 55-154; Laws 1953, c. 188, § 24, p. 601; R.R.S.1943, § 55-154; Laws 1969, c. 459, § 12, p. 1585.

Carpenter employed by Nebraska National Guard in preparation for encampment was employee of state governmental agency under workmen's compensation law, when injured in course of employment. *Nebraska National Guard v. Morgan*, 112 Neb. 432, 199 N.W. 557 (1924).

**55-115 Militia; commander in chief; powers.**

The Governor, as commander in chief of the militia, may employ the militia or any part of it in the defense or relief of the state, or any part of its inhabitants or territories, and shall have all the powers necessary to carry into effect the provisions of this code.

**Source:** Laws 1909, c. 90, § 5, p. 366; R.S.1913, § 3904; C.S.1922, § 3302; C.S.1929, § 55-106; R.S.1943, § 55-105; Laws 1969, c. 459, § 13, p. 1585.

## Cross References

"This code", see section 55-101.

**55-116 Militia; state of insurrection; power of Governor to proclaim.**

Whenever any portion of the militia is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving, or any specified portion thereof, to be in a state of insurrection.

**Source:** Laws 1909, c. 90, § 17, p. 372; R.S.1913, § 3916; C.S.1922, § 3325; C.S.1929, § 55-152; R.S.1943, § 55-182; Laws 1969, c. 459, § 14, p. 1585.

Governor may make use of National Guard to suppress insurrection and his declaration of the existence of a state of insurrection is conclusive. *United States ex rel. Seymour v. Fischer*, 280 F. 208 (D. Neb. 1922).

**55-117 Militia; National Guard; induction into actual service; occasions.**

The Nebraska National Guard shall be liable at all times to be ordered into active service, and shall be first called out by the Governor on all occasions for military service within the state, in time of war, invasions, riot, rebellion, insurrection, disaster, or reasonable apprehension thereof, or upon the requisition of the President of the United States. In case the National Guard is insufficient in number or is not available, the Governor may by proclamation order the enrollment for active service of such additional portion of the militia as he may deem necessary to meet the emergency or to comply with the requisition of the President of the United States, designating the same by draft, if a sufficient number shall not volunteer, and may organize the same in the manner herein provided for organizing the Nebraska National Guard. When so ordered out for service, the militia shall be subject to the same regulations and render the same service as required of the Nebraska National Guard, and receive the same compensation as that prescribed at the time of said service for the army of the United States. In any situation where the National Guard is ordered to duty for any of the purposes listed in this section it shall be the duty, the responsibility, and the obligation of the Governor through the Adjutant General to exercise such control as he deems essential for the purpose of quelling any riot, rebellion or insurrection, and for such purposes any local police authorities shall be subject to his control and direction.

**Source:** Laws 1909, c. 90, § 16, p. 371; R.S.1913, § 3915; C.S.1922, § 3324; C.S.1929, § 55-149; R.S.1943, § 55-180; Laws 1967, c. 615, § 1, p. 2063; R.R.S.1943, § 55-180; Laws 1969, c. 459, § 15, p. 1585; Laws 1974, LB 983, § 2.

National Guard, though subject to call by federal government, is essentially a state institution, and is a governmental agency under Workmen's Compensation Act. *Nebraska National Guard v. Morgan*, 112 Neb. 432, 199 N.W. 557 (1924).

Where proclamation of Governor recites a condition of lawlessness and disorder beyond control of civil authorities, it is equivalent to a declaration of existence of insurrection. *United States ex rel. Seymour v. Fischer*, 280 F. 208 (D. Neb. 1922).

**55-118 Militia; draft for service; apportionment.**

In case of a draft, the Governor shall apportion it equitably among the several counties, taking care that the apportionment shall equitably be made among the several townships or precincts of the county, in such manner as he may prescribe. He shall in case of any such draft appoint a time and place of

assembly, and shall have such other and further power as may be necessary to carry into effect the provisions of this code relative to any such draft.

**Source:** Laws 1909, c. 90, § 16, p. 371; R.S.1913, § 3915; C.S.1922, § 3324; C.S.1929, § 55-151; R.S.1943, § 55-181; Laws 1969, c. 459, § 16, p. 1586.

**Cross References**

“This code”, see section 55-101.

**55-119 Militia; rules and regulations.**

The Governor, as commander in chief, is hereby authorized and empowered to make such rules and regulations and to promulgate all orders which he in his sole discretion shall determine desirable or necessary for the carrying into effect of the provisions of this code. When so promulgated by the Governor they shall have the same force and effect as the provisions of this code. The rules and regulations in force at the time of the passage of this code, and not inconsistent herewith, shall remain in force until new rules and regulations are approved and promulgated.

**Source:** Laws 1929, c. 189, § 54, p. 672; C.S.1929, § 55-173; R.S.1943, § 55-138; Laws 1953, c. 188, § 16, p. 598; R.R.S.1943, § 55-138; Laws 1969, c. 459, § 17, p. 1586.

**Cross References**

“This code”, see section 55-101.

**55-120 National Guard; Military Department; officers; personnel; rank.**

The Military Department shall consist of the Adjutant General in the minimum grade of lieutenant colonel, one deputy adjutant general with a minimum grade of colonel, or a civilian deputy director, one assistant director for Nebraska Emergency Management Agency affairs, and such other officers and enlisted personnel in the number and grade as prescribed by the United States Department of the Army and Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized.

**Source:** Laws 1917, c. 205, § 3, p. 483; Laws 1919, c. 121, § 1, p. 288; C.S.1922, § 3304; Laws 1929, c. 189, § 19, p. 661; C.S.1929, § 55-124; R.S.1943, § 55-139; Laws 1953, c. 188, § 17, p. 598; Laws 1963, c. 321, § 2, p. 975; R.R.S.1943, § 55-139; Laws 1969, c. 459, § 18, p. 1587; Laws 1974, LB 983, § 3; Laws 1996, LB 43, § 10; Laws 2010, LB550, § 2; Laws 2014, LB806, § 1.

Nebraska National Guard is a state governmental agency when preparing for and holding annual encampment. Nebraska National Guard v. Morgan, 112 Neb. 432, 199 N.W. 557 (1924).

**55-121 Adjutant General; qualifications; salary; sources for payment; performance of federal duties; effect.**

The Adjutant General shall be appointed by the Governor from the active or retired commissioned officers of the National Guard of this state. Such Adjutant General shall be or have been a commissioned officer who has actively served in the National Guard of this state for at least five years, shall have attained at least the grade of lieutenant colonel, and shall be able to become eligible for promotion to general officer. If a retired officer is appointed, he or she shall not

have been retired for more than two years at the time he or she is considered for appointment. He or she shall hold his or her office as provided in section 55-136. He or she shall receive for his or her services such salary as the Governor shall direct, payable biweekly, except that such salary shall not exceed the annual pay and allowances of regular military officers of equal rank. If funds made available by the federal government are in excess of the amount payable as directed by the Governor, the excess shall be used to reduce the amount required to be paid by the state. Due to the interrelated nature of the Adjutant General's state and federal duties, the Adjutant General shall not be required to take paid or unpaid leave or leaves of absence to perform his or her federal duties, whether or not under federal orders. The Adjutant General shall continue to receive his or her salary during all such periods. The Adjutant General shall only be required to take leave or leaves of absence during those times when he or she is absent and performing neither his or her state nor federal duties as Adjutant General. This section shall not apply if the Adjutant General is called to active duty of the United States under 10 U.S.C.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-141; Laws 1947, c. 196, § 1, p. 639; Laws 1951, c. 182, § 1, p. 685; Laws 1961, c. 273, § 1, p. 807; Laws 1965, c. 341, § 2, p. 972; R.R.S.1943, § 55-141; Laws 1969, c. 459, § 19, p. 1587; Laws 1974, LB 983, § 4; Laws 2004, LB 963, § 1; Laws 2010, LB550, § 3.

#### **55-122 Adjutant General; powers and duties.**

The Adjutant General shall be in control of the military forces of the state and subordinate only to the Governor in matters pertaining to such forces. He shall issue and transmit all orders of the Governor with reference to the militia or military organization of the state, and shall keep a record of all officers commissioned by the Governor and all general and special regulations, and of all such matters as pertain to the organization of the state militia and Nebraska National Guard. He shall have charge of, and receive and issue all ordnance and ordnance stores, clothing, camp, and garrison equipment, and other public property pertaining to the militia or National Guard of the state, and shall provide transportation and subsistence, when necessary, under authority of the Governor. He shall audit all claims and accounts against the state except as otherwise provided by law. He shall have charge of and carefully preserve the colors, flags, guidons, and military trophies belonging to the state, and shall not allow the same to be loaned out or removed from their proper place of deposit. He shall furnish at the expense of the state all proper blank books, forms, and such military instruction books as shall be approved by the Governor.

**Source:** Laws 1917, c. 205, § 4, p. 484; Laws 1919, c. 121, § 2, p. 289; Laws 1921, c. 234, § 1, p. 832; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-140; Laws 1953, c. 188, § 18, p. 599; R.R.S.1943, § 55-140; Laws 1969, c. 459, § 20, p. 1587.

#### **Cross References**

**Nebraska Emergency Management Agency**, administration of, see section 81-829.31.

It was Adjutant General's duty to enter into lease reasonably necessary to provide National Guard armory for which Legislature appropriated funds. *Omaha Armory Building Co. v. Johnson*, 119 Neb. 29, 226 N.W. 911 (1929).

**55-122.01 Adjutant General; military ceremonies and honors; duties; provide flag; when.**

The Adjutant General shall conduct military ceremonies and honors in accordance with laws, regulations, or customs of the appropriate branch of the service. When an American flag is not provided by other sources, the Adjutant General shall provide an American flag for presentation during the funeral service honors ceremony for an active Nebraska National Guard member or for an honorably discharged Nebraska National Guard member who completed at least twenty years of service.

**Source:** Laws 1991, LB 313, § 2.

**55-123 Adjutant General; disbursing officer; bond or insurance.**

The Adjutant General shall be the disbursing officer, unless otherwise ordered by the Governor, for the allotment to be made by the Secretary of the Army and the Secretary of the Air Force under the provisions of the laws of the United States. He or she shall give such bonds to the United States as may be required by the Secretary of the Army and Secretary of the Air Force, respectively, for the faithful accounting and safekeeping and payment of public money coming into his or her hands or entrusted to him or her for disbursement. To satisfy state bonding requirements, the Adjutant General shall be bonded or insured as required by section 11-201.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-142; Laws 1953, c. 188, § 19, p. 599; R.R.S.1943, § 55-142; Laws 1969, c. 459, § 21, p. 1588; Laws 1978, LB 653, § 15; Laws 2004, LB 884, § 27.

**55-124 Adjutant General; absence or entry into active service; acting Adjutant General; appointment; powers; compensation.**

Whenever the Adjutant General shall be absent from the state on active service in the armed forces of the United States for more than thirty days, including attendance at service schools, his term of office shall not expire, and the Governor may appoint an acting Adjutant General for the period of such absence. The acting Adjutant General shall be chosen from among the officers or former officers of the active National Guard and shall have the same powers and duties as the Adjutant General. He shall be compensated for his services at the same rate provided by law for the pay of the Adjutant General, and during the period in office of such acting Adjutant General, the Adjutant General shall not be entitled to and shall not be paid any salary or other compensation by the state.

**Source:** Laws 1951, c. 181, § 1, p. 684; R.R.S.1943, § 55-141.01; Laws 1969, c. 459, § 22, p. 1588.

**55-125 Adjutant General; assistants; qualifications.**

(1) The Adjutant General shall appoint a deputy adjutant general or a civilian deputy director. An officer appointed as a deputy adjutant general shall hold the minimum grade of colonel as provided in section 55-120. No person shall be eligible for appointment and service as the deputy adjutant general unless he or she is an active member of the Nebraska National Guard. The deputy adjutant general shall have had at least four years of commissioned service in the Nebraska National Guard immediately prior to appointment and shall have

attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her appointment as deputy adjutant general.

(2) The chief of the National Guard Bureau shall appoint a United States property and fiscal officer. The officer shall hold the minimum grade of colonel. The Governor shall nominate one or more officers for the position of United States property and fiscal officer after consultation with the Adjutant General. All nominees shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her nomination. The United States property and fiscal officer may appoint, with the approval of the Adjutant General, one or more assistant United States property and fiscal officers, each with the minimum grade of captain. The United States property and fiscal officer and each assistant United States property and fiscal officer shall be appointed from among the active officers of the Nebraska National Guard and shall have been commissioned officers in the Nebraska National Guard for a period of at least four years immediately prior to appointment.

(3) The Adjutant General shall appoint all additional officers, clerks, and caretakers as may be required.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 833; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-143; Laws 1953, c. 188, § 20, p. 600; Laws 1963, c. 321, § 3, p. 976; R.R.S.1943, § 55-143; Laws 1969, c. 459, § 23, p. 1589; Laws 1974, LB 983, § 5; Laws 1976, LB 614, § 1; Laws 2004, LB 963, § 2; Laws 2010, LB550, § 4; Laws 2014, LB806, § 2.

**55-126 Adjutant General; assistants; duties; bond or insurance; salary.**

The deputy adjutant general or civilian deputy director shall aid the Adjutant General by the performance of such duties as may be assigned by the Adjutant General. In case of absence or inability of the Adjutant General, the deputy adjutant general or civilian deputy director shall perform all or such portion of the duties of the Adjutant General as the latter may expressly delegate to him or her. If the Adjutant General has appointed a civilian deputy director the Adjutant General may, in the event of the Adjutant General's absence, delegate the authority to perform the military duties of the Adjutant General to any active officer of the Nebraska National Guard who shall hold the minimum grade of colonel. In the case of absence of both the Adjutant General and the deputy adjutant general or civilian deputy director, the Adjutant General may delegate the authority to perform the military duties of the Adjutant General to any active officer of the Nebraska National Guard who shall hold the minimum grade of colonel and the Adjutant General may delegate the authority to perform state duties to any member of his or her appointed executive staff. The deputy adjutant general or civilian deputy director shall be bonded or insured as required by section 11-201. The deputy adjutant general or civilian deputy director shall receive such salary as the Adjutant General shall direct, payable biweekly. Such salary for the deputy adjutant general shall not exceed the annual pay and allowances of regular military officers of equal rank and time in service, except that when funds made available by the federal government are in excess of the amount payable as directed by the Adjutant General, the excess shall be used to reduce the amount required to be paid by the State of Nebraska. Except when called or ordered to active duty of the United States

under 10 U.S.C. in support of missions authorized by the President of the United States or Secretary of Defense, the deputy adjutant general shall not be required to take either paid or unpaid leave, or a leave of absence or a reduction in salary, when performing his or her federal duties whether or not under federal orders.

**Source:** Laws 1917, c. 205, § 4, p. 486; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-144; Laws 1947, c. 196, § 2, p. 639; Laws 1951, c. 182, § 2, p. 685; Laws 1963, c. 321, § 4, p. 976; R.R.S.1943, § 55-144; Laws 1969, c. 459, § 24, p. 1589; Laws 1978, LB 653, § 16; Laws 1993, LB 170, § 1; Laws 2004, LB 884, § 28; Laws 2004, LB 963, § 3; Laws 2010, LB550, § 5; Laws 2014, LB806, § 3.

#### **55-127 United States property and fiscal officer; duties; bond or insurance.**

The United States property and fiscal officer shall perform such duties as may be assigned to him or her by the Adjutant General. He or she shall make such reports and returns to the Department of the Army and the Air Force or the President of the United States as may be required by law or regulations. He or she shall give such bond to the United States as may be required by the Secretary of the Army and Secretary of the Air Force, respectively, for the faithful accounting, safekeeping, and payment of public money coming into his or her hands or entrusted to him or her for disbursement. To satisfy state bonding requirements, he or she shall be bonded or insured as required by section 11-201.

**Source:** Laws 1917, c. 205, § 4, p. 486; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-145; Laws 1953, c. 188, § 21, p. 600; Laws 1963, c. 321, § 5, p. 977; R.R.S.1943, § 55-145; Laws 1969, c. 459, § 25, p. 1590; Laws 1978, LB 653, § 17; Laws 2004, LB 884, § 29.

#### **55-128 Adjutant General; seal.**

The Adjutant General shall provide a seal, which shall be the seal of his office, and shall be delivered by him to his successor.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-147; Laws 1969, c. 459, § 26, p. 1590.

#### **55-129 Adjutant General; reports.**

The Adjutant General shall make reports at such times and as to such matters as the Governor may require. He or she shall make such reports and returns to the Department of the Army and Air Force or the President of the United States as may be required by laws or regulations.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 289; Laws 1921, c. 234, § 1, p. 833; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-148; Laws 1953, c. 188, § 23, p. 601; Laws 1955, c. 231, § 11, p. 722; R.R.S.1943, § 55-148; Laws 1969, c. 459, § 27, p. 1590; Laws 1981, LB 545, § 16.



**55-130 Repealed. Laws 1981, LB 545, § 52.****55-131 Adjutant General; property; receipt as trustee; control; disposition; Military Department Cash Fund; created; investment.**

The Military Department Cash Fund is created. The fund shall be administered by the Adjutant General. The fund shall consist of all nonfederal revenue received by the National Guard pursuant to this section. The Adjutant General is hereby authorized to accept by devise, gift, or otherwise and hold, as trustee, for the benefit and use of the National Guard or any part thereof any property, real or personal; to invest and reinvest the property; to collect, receive, and recover the rents, incomes, and issues from the property; and to expend them as provided by the terms of the devise or gift, or if not so provided, to expend them for the benefit and use of the National Guard as he or she in his or her discretion shall determine, subject to the approval of the Governor. Except as otherwise provided by law, all other money received by the National Guard and derived from any other source shall be remitted to the State Treasurer for credit to the Military Department Cash Fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Military Department Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1929, c. 189, § 20, p. 662; C.S.1929, § 55-126; R.S.1943, § 55-150; Laws 1965, c. 342, § 1, p. 973; R.R.S.1943, § 55-150; Laws 1969, c. 459, § 29, p. 1591; Laws 1969, c. 584, § 55, p. 2379; Laws 1995, LB 7, § 61; Laws 2006, LB 787, § 9; Laws 2007, LB322, § 9; Laws 2009, First Spec. Sess., LB3, § 31.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**55-131.01 Repealed. Laws 1988, LB 793, § 7.****55-132 Adjutant General; armories; rifle ranges; control; management; rental.**

The Adjutant General shall be the director of state armories and of the National Guard rifle ranges. He shall provide grounds, armories, and other buildings, for the purpose of drill and for the safekeeping of all federal and state property of the United States or of this state, and lease, in the name of the State of Nebraska, suitable property and buildings therefor, and cause the same to be paid for from money appropriated for National Guard support, when in his judgment it is for the best interests of the state so to do. He shall provide for the management, care and maintenance of such grounds, armories, buildings and National Guard rifle ranges. He may adopt and prescribe such rules and regulations respecting the same as he in his sole discretion shall determine to be necessary or desirable. He may permit, by order, revocable at his pleasure, the use of armories for the regular meetings or functions of patriotic societies or recognized military service organizations or for other meetings of a public nature, at such times and under such circumstances as not to interfere with the use of such armories for military purposes by the units quartered therein, subject to such rules and regulations as he in his sole discretion may determine necessary or desirable. For such use of armories or facilities he may exact such

rent as may be necessary to meet the expense of such meeting, clean and maintain the premises, or pay for extra help required.

**Source:** Laws 1929, c. 189, § 22, p. 662; C.S.1929, § 55-128; R.S.1943, § 55-151; Laws 1961, c. 274, § 1, p. 808; R.R.S.1943, § 55-151; Laws 1969, c. 459, § 30, p. 1591.

**55-133 Adjutant General; armories and equipment; assignment; military emergency vehicles; designation.**

(1) The Adjutant General shall assign to each organization an armory and such other equipment as may be necessary to comply with the requirements of United States laws or regulations for National Guard units allotted to the State of Nebraska.

(2)(a) The Adjutant General may designate any publicly owned military vehicles of the National Guard described in subdivision (b) of this subsection as military emergency vehicles. Military emergency vehicles shall be operated as emergency vehicles only when responding to a public disaster, war, riot, invasion, insurrection, or resistance of process or in case of imminent danger of the occurrence of any of such events. The Adjutant General shall develop and enforce standard operating procedures for military emergency vehicles.

(b) Vehicles eligible for designation as military emergency vehicles shall be limited to vehicles assigned to:

(i) The Civil Support Team, or any successor unit; and

(ii) The chemical, biological, radiological, nuclear, and high-yield explosives enhanced response force package, commonly known as the CERFP unit, or any successor unit.

**Source:** Laws 1929, c. 189, § 21, p. 662; C.S.1929, § 55-127; R.S.1943, § 55-152; Laws 1969, c. 459, § 31, p. 1592; Laws 2008, LB196, § 1.

**55-134 National Guard; composition; discrimination prohibited.**

The Nebraska National Guard shall consist of the regularly enlisted personnel between the ages of seventeen and sixty years organized, armed, and equipped as hereinafter provided, of warrant officers between the ages of eighteen and sixty-two years, and of commissioned officers between the ages of eighteen and sixty-four years. The number of officers and enlisted personnel of the National Guard shall be determined from time to time and organized so as to at least meet the minimum requirements of the National Guard organizations allotted to this state. No discrimination shall be made in the enlistment of an individual, advancement in grade, or appointment of officers on account of race, color, creed, or sex.

**Source:** Laws 1929, c. 189, § 5, p. 658; C.S.1929, § 55-110; Laws 1935, c. 121, § 1, p. 439; C.S.Supp.,1941, § 55-110; R.S.1943, § 55-108; Laws 1945, c. 133, § 1, p. 423; Laws 1953, c. 188, § 6, p. 595; R.R.S.1943, § 55-108; Laws 1969, c. 459, § 32, p. 1592; Laws 1979, LB 80, § 106; Laws 1984, LB 934, § 1.

**55-135 National Guard; personnel; number; grade; service.**

The number and grade of officers and enlisted personnel shall be as prescribed by the United States Department of the Army and the Department of the

Air Force personnel documents provided to the National Guard or as otherwise authorized, but in case of war, invasion, insurrection, riot, or imminent danger, the Governor may temporarily increase them to meet such emergencies. All officers shall hold their commissions until separated by reason of resignation, disability, or pursuant to applicable regulations issued by the Department of the Army or the Department of the Air Force. Vacancies among officers shall be filled by appointment, subject to such regulations relating thereto as now or may hereafter be promulgated by the United States Government.

**Source:** Laws 1929, c. 189, § 9, p. 659; C.S.1929, § 55-114; Laws 1935, c. 121, § 2, p. 439; C.S.Supp.,1941, § 55-114; R.S.1943, § 55-114; Laws 1945, c. 133, § 2, p. 423; R.R.S.1943, § 55-114; Laws 1969, c. 459, § 33, p. 1593; Laws 1978, LB 570, § 1; Laws 1984, LB 934, § 2; Laws 2010, LB550, § 6.

**55-136 National Guard; officers; qualifications; service; discharge.**

Staff officers, including officers of the pay, inspection, subsistence, medical, and Adjutant General's department, shall have had previous military experience and shall hold their positions until they have reached the age of sixty-four years unless retired prior to that time by reason of resignation, disability, or pursuant to applicable regulations issued by the Department of the Army or the Department of the Air Force. Vacancies among such officers shall be filled by appointment by the Governor or the Adjutant General. All commissioned officers shall be entitled to an honorable discharge in writing at the expiration of their term of office on properly accounting for all property for which they are responsible.

**Source:** Laws 1917, c. 205, § 16, p. 488; Laws 1919, c. 121, § 4, p. 291; Laws 1921, c. 234, § 2, p. 835; C.S.1922, § 3320; C.S.1929, § 55-140; Laws 1935, c. 121, § 3, p. 440; C.S.Supp.,1941, § 55-140; Laws 1943, c. 127, § 1, p. 430; R.S.1943, § 55-115; Laws 1969, c. 459, § 34, p. 1593; Laws 1978, LB 570, § 2; Laws 1993, LB 170, § 2.

**55-137 National Guard; officers; commissions.**

Any person appointed and commissioned an officer of the National Guard is required to pass such tests as to his physical, moral and professional fitness as shall be prescribed by the United States. The examination to determine such qualifications for commissions shall be as prescribed by the United States. Officers shall be commissioned by the Governor, and the commission shall designate the arm, staff corps or department, and, in the case of line officers, the unit to which they are assigned.

**Source:** Laws 1929, c. 189, § 11, p. 659; C.S.1929, § 55-116; R.S.1943, § 55-116; Laws 1969, c. 459, § 35, p. 1593.

**55-138 National Guard; officers; selection; separation.**

The system of selecting and separating officers of the Nebraska National Guard will be prescribed in regulations issued by the Department of the Army or Department of the Air Force.

**Source:** Laws 1917, c. 205, § 15, p. 488; Laws 1919, c. 121, § 3, p. 291; C.S.1922, § 3319; C.S.1929, § 55-139; R.S.1943, § 55-117; Laws 1953, c. 188, § 9, p. 596; R.R.S.1943, § 55-117; Laws 1969, c. 459, § 36, p. 1594; Laws 1978, LB 570, § 3.

**55-139 National Guard; officers; powers and duties.**

In addition to the powers and duties prescribed in this code, all officers of the National Guard shall have the same powers and perform the same duties as officers of similar grade and rank in the Army and Air Force of the United States insofar as may be authorized by the laws or regulations of the United States.

**Source:** Laws 1929, c. 189, § 15, p. 661; C.S.1929, § 55-120; R.S.1943, § 55-118; Laws 1953, c. 188, § 10, p. 596; R.R.S.1943, § 55-118; Laws 1969, c. 459, § 37, p. 1594.

## Cross References

"This code", see section 55-101.

**55-139.01 National Guard; peace officer; powers.**

While in the active service of the state or on orders under 32 U.S.C., as a member of the militia of this state or another state, by direction or request of the Governor, members of the National Guard are peace officers and conservators of the peace with the power to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law. They may call any person to their aid and, when necessary, may summon the power of the state. The authority to perform peace officer duties will be established within the official order to duty and may be limited by the Governor, in writing, as necessitated by the mission.

**Source:** Laws 2010, LB550, § 7.

**55-140 National Guard; oaths; commissioned officers may administer.**

All commissioned officers of the Nebraska National Guard shall be authorized and empowered to administer oaths and affirmations necessary for the administration of military business.

**Source:** Laws 1909, c. 90, § 63, p. 384; R.S.1913, § 3962; C.S.1922, § 3360; C.S.1929, § 55-179; R.S.1943, § 55-119; Laws 1969, c. 459, § 38, p. 1594; Laws 1993, LB 170, § 3.

**55-141 Militia; commissioned officers; power of arrest.**

Any commissioned officer of the military forces shall have the ordinary powers of a peace officer to arrest and detain any member of the military forces of the State of Nebraska for the commission of any crime punishable under the laws of the state while in any active service of the state. The arresting officer may release the offender to the civil authorities for prosecution.

**Source:** Laws 1909, c. 90, § 70, p. 386; R.S.1913, § 3968; C.S.1922, § 3366; C.S.1929, § 55-184; R.S.1943, § 55-120; Laws 1969, c. 459, § 39, p. 1594.

**55-141.01 Transferred to section 55-124.****55-142 Violations; penalty.**

Any person who (1) trespasses upon any campground, armory, airport or any other place devoted to military duty; (2) unlawfully molests, insults, abuses or obstructs any member of the Nebraska National Guard while in the performance of his military duty; (3) interrupts or disturbs the orderly discharge of

military duty; or (4) disturbs or prevents the passage of troops going to or returning from any duty shall be guilty of a Class II misdemeanor.

Upon probable cause, any person suspected of violating this section may be detained by or at the direction of the commanding officer of the troops or of the place concerned.

The Adjutant General may cause any person so detained in accordance with the provisions of this section to be released to the civil authorities for prosecution.

**Source:** Laws 1969, c. 459, § 40, p. 1594; Laws 1977, LB 39, § 50.

**55-143 National Guard; officers; fitness; determination.**

At any time the moral character, capacity, and general fitness for the service of any National Guard officer may be determined by a board as provided by the United States. Commissions of officers of the National Guard may be vacated upon resignation, upon absence without leave for three months, upon recommendation of a board pursuant to sentence of a court-martial, or upon separation based upon the causes set forth in section 55-136. Officers of the guard rendered surplus by the disbandment of their organization shall be disposed of as provided by the United States. Officers may, upon their own application, be placed in the reserve as may be authorized by the United States.

**Source:** Laws 1929, c. 189, § 12, p. 660; C.S.1929, § 55-117; R.S.1943, § 55-122; Laws 1969, c. 459, § 41, p. 1595; Laws 1978, LB 570, § 4; Laws 1993, LB 170, § 4.

**55-144 National Guard; officers; resignation.**

Commissioned officers and warrant officers may resign in such manner and under such circumstances as may be prescribed by regulations of the United States Government.

**Source:** Laws 1929, c. 189, § 10, p. 659; C.S.1929, § 55-115; R.S.1943, § 55-123; Laws 1969, c. 459, § 42, p. 1595.

**55-144.01 Repealed. Laws 1959, c. 266, § 1.**

**55-145 National Guard; officers; resignations; acceptance; limitations.**

Resignations of all commissioned officers and warrant officers will be forwarded to the Adjutant General, through their immediate commanding officers, for the action of the Governor, who may accept and grant an honorable discharge; *Provided*, the officer shall not be honorably discharged until he has satisfactorily accounted for all property he may be responsible for, nor while under charges for the commission of any offense.

**Source:** Laws 1909, c. 90, § 47, p. 381; R.S.1913, § 3946; C.S.1922, § 3345; C.S.1929, § 55-172; R.S.1943, § 55-124; Laws 1969, c. 459, § 43, p. 1595.

**55-146 National Guard; personnel; ordered to active duty; limitations.**

Officers and enlisted personnel of the National Guard who are active or retired may be ordered to active service of the state by the Governor or the Adjutant General: (1) During times of disaster declared by the Governor; (2) in any emergency when the lives or the property of the people of this state are

endangered; and (3) at any time for advice, counsel, duties, or service to the Governor or Adjutant General. The length of service of any individual ordered to active service of the state for disasters or emergencies shall be determined by the Adjutant General. The length of service for any individual ordered to active service of the state for advice, counsel, duties, or service to the Governor or Adjutant General shall not exceed fifteen continuous days for any one mission or project, and no more than fifteen individuals shall be ordered to such duty for any one mission or project.

**Source:** Laws 1955, c. 213, § 1, p. 598; Laws 1963, c. 321, § 1, p. 975; Laws 1965, c. 341, § 1, p. 971; R.R.S.1943, § 55-121.01; Laws 1969, c. 459, § 44, p. 1596; Laws 1984, LB 934, § 3; Laws 1990, LB 930, § 1.

**55-147 National Guard; officers; retired at higher grade, when.**

The Governor shall have the power, on good cause shown, to retire any officer in the next higher grade than that held by the officer during his active military service in the National Guard.

**Source:** Laws 1955, c. 213, § 2, p. 598; R.R.S.1943, § 55-121.02; Laws 1969, c. 459, § 45, p. 1596.

**55-148 National Guard; officers; retirement; right of retired officers to wear uniform and insignia.**

Commissions of National Guard officers shall be vacated as provided by the laws or regulations of the United States. Any commissioned officer of the National Guard who resigns or is retired and who shall have served as such officer for a period of not less than ten years, and any commissioned officer of the National Guard who has been honorably discharged from the Army of the United States after serving therein for a period of ninety days or more during any war and who shall have served as such officer of the National Guard for a period of not less than five years, and any commissioned officer of the National Guard who has become, or who shall hereafter become, disabled and thereby incapable of performing the duties of his office, may, upon his retirement upon his own request in writing, stating the grounds therefor, and by order of the Governor, have his name placed on a roll in the office of the Adjutant General to be known as the roll of retired officers, and shall thereby be entitled to wear, when not in conflict with the laws or regulations of the United States, on state or other occasions of ceremony, the uniform of the rank last held by him. The Governor may, by general order, provide a suitable mark of distinction for all officers and enlisted men who have served in the National Guard.

**Source:** Laws 1929, c. 189, § 13, p. 660; C.S.1929, § 55-118; R.S.1943, § 55-125; Laws 1969, c. 459, § 46, p. 1596.

**55-149 National Guard; arms; supplies; issuance.**

Arms, accoutrements, ammunition, supplies and stores shall be issued to the proper officers of each organization upon requisition as prescribed by the laws or regulations of the United States.

**Source:** Laws 1929, c. 189, § 18, p. 661; C.S.1929, § 55-123; R.S.1943, § 55-126; Laws 1969, c. 459, § 47, p. 1597.

**55-150 National Guard; officers; bond or insurance; amount; conditions.**

Commanders of organizations and units and all other officers who are responsible for public military property shall execute and deliver to the Adjutant General a bond, in such sum as the Governor may direct, not exceeding five thousand dollars, payable to the State of Nebraska, with sufficient sureties, to be approved by the Governor, conditioned for the proper care and use of such public property, and the return of same, in good order, ordinary wear and unavoidable loss and damage excepted; and in case of such loss or damage, the bond shall require the officer to immediately furnish the Adjutant General with properly attested affidavits, setting forth all the facts attending such loss or damage. Officers who are employees, as defined by section 81-1302, of the Military Department shall be bonded or insured as required by section 11-201.

**Source:** Laws 1909, c. 90, § 33, p. 376; R.S.1913, § 3933; C.S.1922, § 3333; C.S.1929, § 55-160; R.S.1943, § 55-127; Laws 1969, c. 459, § 48, p. 1597; Laws 1978, LB 653, § 18; Laws 2004, LB 884, § 30.

**55-151 National Guard; enlistments; reenlistments; how made; qualifications.**

No enlistment shall be allowed other than of able-bodied citizens of the United States and able-bodied persons of foreign birth who have been admitted to the United States for permanent residence. Such citizens or persons are required to be between the ages of seventeen and sixty years. All enlistments, reenlistments, and extensions of enlistments in the National Guard shall be in the manner and form, and for such periods as may be authorized by the laws of the United States, and regulations of the Secretary of the Army and the Secretary of the Air Force relating thereto, and shall be made by signing enlistment papers according to the form prescribed by the Adjutant General, and taking the prescribed oath or affirmation, which may be administered by any commissioned officer.

**Source:** Laws 1917, c. 205, § 7, p. 487; C.S.1922, § 3311; Laws 1929, c. 189, § 25, p. 663; C.S.1929, § 55-131; R.S.1943, § 55-129; Laws 1953, c. 188, § 12, p. 597; Laws 1963, c. 322, § 1, p. 978; R.R.S.1943, § 55-129; Laws 1969, c. 459, § 49, p. 1597.

**55-152 National Guard; federal service; termination; enlistments unaffected.**

Upon the termination of any emergency for which the National Guard has been drafted or called into the service of the United States, all persons so drafted or called, upon being discharged from the Army or Air Force of the United States, shall continue to serve in the Nebraska National Guard until the dates upon which their enlistments entered into prior to their draft or call into service would have expired if uninterrupted.

**Source:** Laws 1929, c. 189, § 14, p. 661; C.S.1929, § 55-119; R.S.1943, § 55-130; Laws 1953, c. 188, § 13, p. 597; R.R.S.1943, § 55-130; Laws 1969, c. 459, § 50, p. 1598; Laws 1993, LB 170, § 5.

**55-153 National Guard; continuous service, defined.**

Service by any person in the armed forces of the United States, or in national emergency, time of war, insurrection, or rebellion, shall be considered as continuous service in the National Guard for any and all purposes regarding privileges and exemptions provided by law for members of the National Guard

by enlistment or commission; *Provided*, that the continuous service for an officer shall include only the time he was commissioned as such.

**Source:** Laws 1929, c. 189, § 28, p. 664; C.S.1929, § 55-134; R.S.1943, § 55-131; Laws 1953, c. 188, § 14, p. 597; R.R.S.1943, § 55-131; Laws 1969, c. 459, § 51, p. 1598.

**55-154 Militia; enlistments; length.**

Enlistments in the militia called out by proclamation of the Governor shall be for the term specified in such proclamation.

**Source:** Laws 1909, c. 90, § 21, p. 373; R.S.1913, § 3920; C.S.1922, § 3328; C.S.1929, § 55-155; R.S.1943, § 55-132; Laws 1969, c. 459, § 52, p. 1598.

**55-155 National Guard; enlisted personnel; discharge.**

An enlisted person discharged from service in the National Guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed by the laws or regulations of the United States. In time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the United States may prescribe.

**Source:** Laws 1929, c. 189, § 26, p. 663; C.S.1929, § 55-132; R.S.1943, § 55-133; Laws 1969, c. 459, § 53, p. 1598; Laws 1984, LB 934, § 4.

**55-156 National Guard; dishonorable discharge; effect; posting.**

A dishonorable discharge from service in the Nebraska National Guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein, and disqualification for any military service under the state. The names of all persons dishonorably discharged shall be published in orders by the Adjutant General quarterly.

**Source:** Laws 1929, c. 189, § 27, p. 663; C.S.1929, § 55-133; R.S.1943, § 55-134; Laws 1969, c. 459, § 54, p. 1599.

**55-157 Militia; active duty; personnel; compensation; travel expenses; health insurance reimbursement.**

(1) When an active or retired officer or enlisted person of the National Guard is ordered to active service of the state by the Governor or Adjutant General, he or she shall receive compensation as provided in this subsection. For service during a disaster or emergency, an officer or enlisted person shall be entitled to the same pay, subsistence, and quarters allowance as officers and enlisted personnel of corresponding grades of the Army and Air Force of the United States and shall be reimbursed for travel expenses in accordance with the Joint Federal Travel Regulations. For advice, counsel, duties, or service to the Governor or Adjutant General, an officer or enlisted person may, at the discretion of the Adjutant General, be in a pay or nonpay status. If in a pay status, the officer or enlisted person shall be entitled to the same pay, subsistence, and quarters allowance as officers and enlisted personnel of corresponding grades of the Army and Air Force of the United States and shall be reimbursed for travel expenses in accordance with the Joint Federal Travel Regulations.



(2) For any period of active service of the state in excess of thirty consecutive days, performed at the order of the Governor or Adjutant General or at the request of the federal government, a state, or other agency or entity, an officer or enlisted person shall be entitled to reimbursement of one hundred percent of the cost of his or her privately purchased health insurance or up to one hundred two percent of the cost of his or her employer-provided health insurance. The officer or enlisted person shall provide evidence of payment and shall be reimbursed to the extent that evidence of payment can be provided. The reimbursement for health insurance shall be treated as an allowance but may be paid separately once received by the State of Nebraska from the federal government, a state, or other agency or entity requesting the services of the officer or enlisted person. The State of Nebraska will not pay or advance the cost of such health insurance reimbursement for the federal government, a state, or other agency or entity. The State of Nebraska is exempt from the requirement under this subsection to reimburse officers and enlisted persons for their health insurance costs.

**Source:** Laws 1909, c. 90, § 44, p. 380; R.S.1913, § 3943; C.S.1922, § 3343; C.S.1929, § 55-170; R.S.1943, § 55-184; Laws 1953, c. 188, § 33, p. 606; R.R.S.1943, § 55-184; Laws 1969, c. 459, § 55, p. 1599; Laws 1984, LB 934, § 5; Laws 1990, LB 930, § 2; Laws 2004, LB 963, § 4; Laws 2012, LB1141, § 1.

**55-157.01 Repealed. Laws 1976, LB 596, § 1.**

**55-157.02 Recruiting; strength maintenance; expenditure of funds; Adjutant General; supervise.**

Recruiting and strength maintenance activities of the Military Department may include, but shall not be limited to, (1) provision to members of the National Guard of suitable awards, honorariums, or other proper recognition for successful recruiting efforts, (2) provision for the financial support of official National Guard functions, the purpose of which is to provide information in regard to and create interest in the National Guard among potential recruits and their families, (3) the preparation and dissemination of informational material in regard to the National Guard, and (4) advertising in public media for recruiting purposes, and all necessary expenses in connection therewith. The Adjutant General shall supervise the expenditure of such funds for the purposes enumerated.

**Source:** Laws 1974, LB 983, § 8.

**55-157.03 Incentive payments; purpose; restrictions.**

The Adjutant General may authorize a payment to encourage individuals to enlist or reenlist in units of the Nebraska National Guard whenever the strength level of such units is so low as to adversely affect the ability of such units to meet their state or federal mission, if the sum of such payments does not exceed the amount appropriated for this purpose. The Adjutant General may devise and change a formula to distribute incentive payments to members of the Nebraska Army National Guard and the Air National Guard, so as to encourage enlistments, reenlistments, or both, subject to the following restrictions. The payments shall be restricted to enlisted persons who have less than twelve years of total military service. The payments shall not exceed the rate of one hundred dollars per year of service but may be provided in advance of service, except

that not more than three hundred dollars shall be paid in advance of performed service to any one individual at any time.

**Source:** Laws 1978, LB 564, § 4.

**55-158 Compensation; payment.**

Whenever a member of the military forces of the State of Nebraska is entitled to compensation as provided in section 55-157, the Adjutant General shall certify the amount of compensation to be paid and direct that the warrant shall be charged against the state appropriated funds of the military department.

**Source:** Laws 1969, c. 459, § 56, p. 1599.

**55-159 Injury or death while on active duty; workers' compensation benefits; procedure; exceptions.**

A member of the military forces of the State of Nebraska who incurs a personal injury which is caused by accident or occupational disease while in the active service of this state ordered by competent authority, which injury arises out of and in the course of his or her employment in active service, shall be entitled to workers' compensation benefits in accordance with the definitions and terms of the Nebraska Workers' Compensation Act. If such member incurs death under the same conditions, the dependents of the deceased, if any, shall be entitled to workers' compensation benefits as provided in the Nebraska Workers' Compensation Act. Any dispute arising under this section shall be resolved under the provisions established by the Nebraska Workers' Compensation Act. No workers' compensation benefits shall be paid under this section in any case to the extent that any benefits for injury or death are paid or payable under the provisions of 32 U.S.C.

**Source:** Laws 1969, c. 459, § 57, p. 1599; Laws 1974, LB 983, § 6; Laws 1986, LB 811, § 139.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**55-160 Military leave of absence without loss of pay; limitations.**

(1) All employees, including elected officials of the State of Nebraska, or any political subdivision thereof, who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve, shall be entitled to a military leave of absence from their respective duties, without loss of pay, when employed with or without pay under the orders or authorization of competent authority in the active service of the state or of the United States. Members who normally work or are normally scheduled to work one hundred fifty-nine hours or more in three consecutive weeks and scheduled to work twenty-four hour shifts shall receive a military leave of absence of one hundred sixty-eight hours each calendar year. Members who normally work or are normally scheduled to work one hundred twenty hours or more but less than one hundred fifty-nine hours in three consecutive weeks shall receive a military leave of absence of one hundred twenty hours each calendar year. Members who normally work or are normally scheduled to work less than one hundred twenty hours in three consecutive weeks shall receive a military leave of absence each calendar year equal to the number of hours they normally work or would normally be scheduled to work, whichever

is greater, in three consecutive weeks. Such military leave of absence may be taken in hourly increments and shall be in addition to the regular annual leave of the persons named in this section.

(2) When the Governor of this state declares that a state of emergency exists and any of the persons named in this section are ordered to active service of the state, a state of emergency leave of absence will be granted until such member is released from active service of the state by competent authority. A military leave of absence shall not be used during a state of emergency declared by the Governor. Other forms of leave may be granted. During a state of emergency leave of absence because of the call of the Governor, any official or employee subject to this section shall receive his or her normal salary or compensation minus the state active duty base pay he or she receives in active service of the state. Governmental officers serving a term of office shall receive their compensation as provided by law.

**Source:** Laws 1947, c. 198, § 1, p. 642; Laws 1953, c. 188, § 26, p. 602; R.R.S.1943, § 55-156.01; Laws 1969, c. 459, § 58, p. 1600; Laws 2002, LB 722, § 3; Laws 2018, LB1003, § 1.

Under former law, the term "workday" for purposes of military leave means any 24-hour period in which work is done. *Hall v. City of Omaha*, 266 Neb. 127, 663 N.W.2d 97 (2003).

A claim for relief made pursuant to this section is not preempted by the Railway Labor Act, 45 U.S.C. section 151 et seq. This section is inapplicable to private sector employment

relationships. *Ferguson v. Union Pacific R.R. Co.*, 258 Neb. 78, 601 N.W.2d 907 (1999).

State employee on paid emergency military duty entitled to receive portion of regular employment salary as equals income loss on active duty. *King v. School Dist. of Omaha*, 197 Neb. 303, 248 N.W.2d 752 (1976).

### **55-161 Military leave of absence; rights of officer or employee.**

(1) The parts of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Chapter 43, listed in subdivisions (a) through (j) of this subsection or any other parts referred to by such parts, in existence and effective as of January 1, 2001, are adopted as Nebraska law. This section shall be applicable to all persons employed in the State of Nebraska and shall include all officers and permanent employees, including teachers employed on a one-year contract basis and elected officials, of the state or of any of its agencies or political subdivisions. The Legislature hereby adopts:

- (a) Section 4301(a) — Purposes;
- (b) Section 4302 — Relation to other law and plans or agreements;
- (c) Section 4303(2),(4),(7) through (13),(15), and (16) and those portions of subparagraph (3) not relating to employment in a foreign country — Definitions;
- (d) Section 4304 — Character of service;
- (e) Section 4311 — Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited;
- (f) Section 4312 — Reemployment rights of persons who serve in the uniformed services;
- (g) Section 4313 with the exception of that portion of subparagraph (a) dealing with reemployment of federal employees — Reemployment positions;
- (h) Section 4316 — Rights, benefits, and obligations of persons absent from employment for service in a uniformed service;
- (i) Section 4317 — Health plans; and
- (j) Section 4318 — Employee pension benefit plans.

(2) This section applies to all members performing duty in active service of the state and to any person employed in Nebraska who is a member of the National Guard of another state and who is called into active service by the Governor of that state.

(3) The proper appointing authority or employer may make a temporary appointment to fill any vacancy created by the absence of an officer or employee pursuant to this section. Such officer or employee shall not be discharged from his or her former or new position without justifiable cause within one year after reinstatement.

(4) The Commissioner of Labor shall enforce this section.

(5) The Adjutant General shall perform duties assigned to the Secretary of Defense, Secretary of Veterans Affairs, or Secretary of Labor in the portions of 38 U.S.C. Chapter 43 adopted under this section.

**Source:** Laws 1951, c. 183, § 1, p. 686; Laws 1953, c. 189, § 1, p. 609; R.R.S.1943, § 55-156.02; Laws 1969, c. 459, § 59, p. 1600; Laws 1969, c. 751, § 8, p. 2828; Laws 1972, LB 1510, § 1; Laws 2002, LB 722, § 4; Laws 2016, LB753, § 1.

**55-161.01 Officers and employees of state; violation of rights; Commissioner of Labor; investigate; order; filing of action; order.**

Any person who feels that his or her employment rights under the provisions of section 55-161 have been violated may file complaint with respect thereto with the Commissioner of Labor. Such complaint shall not be subject to formal requirements but shall be sufficient if it identifies the parties involved and the right or rights alleged to have been violated. The commissioner shall promptly investigate each such complaint and if he or she finds that the allegations thereof are true he or she shall issue his or her order to the offending party directing the granting to complainant of all his or her rights under section 55-161, including the granting of backpay from the date the violation occurred. If such order has not been complied with within ten days after its mailing, by registered or certified mail, the commissioner may file suit in the district court for the county in which the alleged violation occurred for a writ of mandamus ordering the granting of the rights wrongfully denied together with backpay from the date the violation occurred. Such suit shall be determined by the court as expeditiously as practicable. The court shall enter such order as the evidence shows to be appropriate, including, in cases of flagrant violations of rights, the removal from office or employment of the person or persons responsible therefor when such removal is permitted by the Constitution of the State of Nebraska. In any such suit or in any appeal from the decision of the district court, the commissioner may employ private counsel with the written authorization required by subdivision (5) of section 84-205. A reasonable fee for such counsel shall be allowed by the court in any case in which a decision favorable to the commissioner is rendered.

**Source:** Laws 1972, LB 1510, § 2; Laws 1997, LB 758, § 5.

**55-161.02 Officers and employees of state; employer; granting of rights of veteran; effect.**

The employer shall not incur any liability to any person whose employment is terminated, or whose seniority, status, or other employment rights are curtailed

as the result of the granting to a veteran of all the rights assured him under the provisions of section 55-161.

**Source:** Laws 1972, LB 1510, § 3.

**55-162 Repealed. Laws 2002, LB 722, § 9.**

**55-163 Repealed. Laws 2002, LB 722, § 9.**

**55-164 Military leave of absence; damages for noncompliance.**

If any employer fails to comply with any of the provisions of section 55-160 or 55-161, the employee may, at his or her election, bring an action at law for damages for such noncompliance. The employee may also apply to the courts for such equitable relief as may be just and proper under the circumstances.

**Source:** Laws 1957, c. 238, § 3, p. 799; R.R.S.1943, § 55-193; Laws 1969, c. 459, § 62, p. 1602; Laws 2002, LB 722, § 5.

**55-165 Military leave of absence; violation; penalty.**

Any person, firm, or organization violating section 55-160 or 55-161 shall be guilty of a Class IV misdemeanor and, in addition thereto, shall restore to the employee all rights of which he or she has been illegally deprived.

**Source:** Laws 1957, c. 238, § 4, p. 799; R.R.S.1943, § 55-194; Laws 1969, c. 459, § 63, p. 1602; Laws 1977, LB 39, § 51; Laws 2002, LB 722, § 6.

**55-166 National Guard; armed forces of United States; member; discharge by employer; violation; penalty.**

Any person, firm, or organization, who discharges an employee because of his membership in the National Guard of this state or his fulfillment of military duty in the active service of the state or of the United States, shall be guilty of a Class IV misdemeanor, and, in addition thereto, shall restore the employee to a position of like seniority, status, and pay.

**Source:** Laws 1955, c. 213, § 3, p. 599; R.R.S.1943, § 55-190; Laws 1969, c. 459, § 64, p. 1603; Laws 1977, LB 39, § 52.

**55-167 Member of military forces; active service; exempt from arrest on civil process.**

No member of the military forces of the State of Nebraska shall be arrested, or served with any summons, order, warrant, or other civil process after having been ordered to active service of the state or while going to, or attending any place to which he is required to go for active service of the state; but nothing herein shall prevent his arrest for a felony or misdemeanor committed while not in the line of duty.

**Source:** Laws 1969, c. 459, § 65, p. 1603.

**55-168 Militia; active service; civil and criminal liability; immunity.**

Members of the military forces ordered into the active service of the state by any proper authority shall not be liable, civilly or criminally, for any act or acts done by them while in the line of duty.

**Source:** Laws 1909, c. 90, § 15, p. 371; R.S.1913, § 3914; C.S.1922, § 3323; Laws 1929, c. 189, § 41, p. 668; C.S.1929, § 55-150; R.S.1943, § 55-183; Laws 1969, c. 459, § 66, p. 1603.

**55-169 Militia; action or proceeding against member on active service; bond; conditions.**

Any person bringing an action or proceeding against any member of the military forces of the State of Nebraska for any act done when in active service of the state shall furnish, at the filing of the suit, security for payment of costs in such amount and in such form as the judge of the court in which such action or proceeding was initiated may determine, including attorney's fees, likely to accrue in such action or proceeding. If the plaintiff fails to prevail in such action or proceeding, judgment will be entered against him and his sureties on the bond for the defendant's attorney's fees and costs of the action.

**Source:** Laws 1969, c. 459, § 67, p. 1603.

**55-170 Militia; action or proceeding against member on active service; change of venue.**

In any action or proceeding against a member of the military forces of the State of Nebraska for any act done when in active service of the state, such member, on appropriate motion, shall be entitled to have the venue changed to the nearest county in the adjoining judicial district; and in any suit against two or more members of the Nebraska National Guard, each of them shall be entitled to severance.

**Source:** Laws 1969, c. 459, § 68, p. 1603.

**55-171 Militia; action or proceeding against member on active service; legal counsel; expense.**

If a civil or criminal suit or proceeding is commenced in any court by any person against a member of the military forces of the State of Nebraska for any act done when in the active service of this state the defendant may have counsel of his own selection at his individual expense, or competent legal counsel shall be provided at the expense of the state, for all stages of the proceedings.

Any legal counsel provided at the expense of the state shall be the Attorney General or a member of his staff or a practicing attorney designated by him. Compensation of counsel at the expense of the state shall be charged against military department funds.

**Source:** Laws 1969, c. 459, § 69, p. 1604.

**55-172 Militia; action or proceeding against member on active service; service of copy on Adjutant General; procedure.**

Any person bringing an action or proceeding against any member of the military forces of the State of Nebraska for any act done when in the active service of the state shall serve upon the Adjutant General a copy of any

pleading, complaint, or information and the Adjutant General shall be entitled to be heard in such action or proceeding.

**Source:** Laws 1969, c. 459, § 70, p. 1604.

**55-173 National Guard; Nebraska State Guard; labor service; jury service; exemptions.**

The officers and enlisted men of the Nebraska National Guard and Nebraska State Guard shall be exempt from (1) working on roads and highways, and (2) sitting on any grand or petit jury within this state while they are active members thereof.

**Source:** Laws 1909, c. 90, § 64, p. 385; R.S.1913, § 3963; C.S.1922, § 3361; C.S.1929, § 55-180; R.S.1943, § 55-187; Laws 1945, c. 134, § 1, p. 424; R.R.S.1943, § 55-187; Laws 1969, c. 459, § 71, p. 1604.

**Cross References**

For other provisions for exemption from jury service, see section 25-1650.

**55-174 National Guard; fire department or district membership or service; effect on duty.**

No member of the Nebraska National Guard shall be exempt or relieved from duty by membership or service in any fire department or district.

**Source:** Laws 1909, c. 90, § 65, p. 385; R.S.1913, § 3900; C.S.1922, § 3298; C.S.1929, § 55-102; R.S.1943, § 55-135; Laws 1969, c. 459, § 72, p. 1604.

**55-175 National Guard; members in uniform; failure to admit or serve; penalty.**

An owner, manager or employee of a hotel, restaurant, place of amusement or other establishment or place of business open to the public shall not refuse to admit or serve in the same manner and to the same extent as members of the general public are admitted and served a member of the National Guard wearing the prescribed uniform.

A person violating this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1969, c. 459, § 73, p. 1605; Laws 1977, LB 39, § 53.

**55-176 Transferred to section 28-1481.**

**55-177 Transferred to section 28-1482.**

**55-178 National Guard; payrolls; certification; transmission.**

Payrolls for services shall be forwarded in duplicate to the Adjutant General within ten days after such services, by brigade, regimental, and company commanders, with their certificates and oaths that the persons therein named have performed the duties and are entitled to the pay therein specified. Within ten days after the receipt of such payrolls, the Adjutant General shall, if

approved by the Governor and himself, forward one of the payrolls to the Director of Administrative Services.

**Source:** Laws 1909, c. 90, § 60, p. 384; R.S.1913, § 3959; C.S.1922, § 3357; C.S.1929, § 55-176; R.S.1943, § 55-185; Laws 1969, c. 460, § 2, p. 1608; Laws 1969, c. 459, § 76, p. 1605.

**55-179 National Guard; vouchers; payrolls; payment; warrants.**

The Director of Administrative Services is hereby authorized and required on presentation of the proper vouchers and payrolls to draw his warrant on the state General Fund and against the appropriation made by the Legislature for the support and maintenance of the National Guard.

**Source:** Laws 1909, c. 90, § 61, p. 384; R.S.1913, § 3960; C.S.1922, § 3358; C.S.1929, § 55-177; R.S.1943, § 55-186; Laws 1969, c. 459, § 77, p. 1606.

Under former law Auditor of Public Accounts was required to issue warrant for rental of armory leased by Adjutant General, for which appropriation was made. Omaha Armory Building Co. v. Johnson, 119 Neb. 29, 226 N.W. 911 (1929).

**55-180 National Guard; encampment; commanding officer; powers; duties.**

The commanding officer of any encampment or training assembly may cause those under his command to perform any camp or field duties he may require. He may put under arrest during such encampment or training assembly any member of his command who may disobey a superior officer, or be guilty of disorderly or unmilitary conduct, or any other person who may trespass upon the encampment grounds or training assembly, or molest the orderly discharge of duty by members of his command.

**Source:** Laws 1909, c. 90, § 41, p. 379; R.S.1913, § 3941; C.S.1922, § 3341; C.S.1929, § 55-168; R.S.1943, § 55-155; Laws 1969, c. 459, § 78, p. 1606.

**55-181 Department; contract with Nebraska Wing of Civil Air Patrol; purposes; funding agreement.**

The Military Department may contract with the Nebraska Wing of the Civil Air Patrol, the civilian auxiliary of the United States Air Force, for the following purposes:

- (1) To encourage and aid American citizens in the contribution of their efforts, services, and resources in the development of aviation and the maintenance of aerospace supremacy;
- (2) To encourage and develop, by example, the voluntary contribution of private citizens to the public welfare;
- (3) To provide aviation and aerospace education and training;
- (4) To foster and encourage civil aviation in local communities throughout the state; and
- (5) To assist in meeting emergencies within the state.

The Division of Aeronautics of the Department of Transportation and the Military Department shall enter into an agreement that will continue the funding of the contract under this section from the Aeronautics Cash Fund in an amount equal to the appropriation by the Legislature for such purpose.

**Source:** Laws 1976, LB 847, § 1; R.S.1943, (1997), § 3-125.01; Laws 2003, LB 69, § 1; Laws 2017, LB339, § 178.



**55-182 Nebraska National Guard; rights.**

The rights of a member of the Nebraska National Guard in the State of Nebraska shall include, but not be limited to, the right to:

- (1) Seek employment with state, county, and local government;
- (2) Not have membership in the Nebraska National Guard impact such member's right to donate to political parties when not on duty status;
- (3) Participate with state, county, or local government in a law enforcement function as prescribed by that government;
- (4) Receive the same protections a law enforcement officer is afforded under section 23-3211 if the member is acting as a law enforcement officer pursuant to subdivision (3) of this section; and
- (5) Protection of such member's personal information as afforded personnel of public bodies pursuant to subdivision (7) of section 84-712.05, if the member is acting as a law enforcement officer pursuant to subdivision (3) of this section.

**Source:** Laws 2019, LB152, § 1.

**55-183 National Guard; state-sponsored life insurance program; Adjutant General; powers and duties.**

(1) For purposes of this section, state-sponsored life insurance program means the life insurance program exclusively offered to all members of the Nebraska National Guard through the National Guard Association of Nebraska pursuant to the federal Veterans' Insurance Act of 1974, Public Law 93-289.

(2) Pursuant to this section, the Adjutant General shall:

- (a) Allow efforts to make the state-sponsored life insurance program available to all members of the Nebraska National Guard;
- (b) Provide an opportunity for members of the Nebraska National Guard to purchase state-sponsored life insurance program products; and
- (c) Allow state-sponsored life insurance program representatives to provide Nebraska National Guard members with state-sponsored life insurance program briefings during annual training and inactive duty training periods to educate members on the state-sponsored life insurance program.

**Source:** Laws 2019, LB223, § 1.

**ARTICLE 2****NEBRASKA STATE GUARD**

## Section

- 55-201. Nebraska State Guard; when called into service; organization.  
 55-202. Rules and regulations; acceptance of gratuities; conditions.  
 55-203. Commissions; enlistments; qualifications.  
 55-204. Commissions; conviction of felony; effect; fingerprints.  
 55-205. Enlistment; term; oath.  
 55-206. Officers; oath.  
 55-207. Members; compensation.  
 55-208. Equipment; facilities.  
 55-209. Repealed. Laws 1969, c. 459, § 82.  
 55-210. Repealed. Laws 1969, c. 459, § 82.  
 55-211. Repealed. Laws 1969, c. 459, § 82.  
 55-212. Service within state; exceptions.  
 55-213. Fugitive; apprehension in another state; duty.  
 55-214. Fugitive to this state; capture authorized.

## Section

- 55-215. Fugitive to this state; apprehension; surrender to local authorities.  
 55-216. Fugitive to this state; sections, how construed.  
 55-217. Federal service; treatment of guard members.  
 55-218. Civil organizations; not eligible for enlistment.  
 55-219. Act, how cited.

**55-201 Nebraska State Guard; when called into service; organization.**

Whenever any part of the National Guard of the State of Nebraska is in active federal service, whenever the President of the United States shall declare a national emergency, or whenever the Governor shall declare an emergency, the Governor is hereby authorized to organize and maintain within this state during such periods, under such regulations as the Secretaries of the Army and Air Force of the United States may prescribe for the organization, standards of training, instruction, and discipline, such military forces as the Governor may deem necessary to defend this state. Such forces shall be composed of officers commissioned or assigned by the Governor, and such able-bodied citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of the reserve militia enrolled by draft or otherwise as provided by law. Such forces shall be additional to and distinct from the National Guard and shall be known as the Nebraska State Guard. Such forces shall be uniformed.

**Source:** Laws 1941, c. 116, § 1, p. 447; C.S.Supp.,1941, § 55-401; Laws 1943, c. 126, § 1, p. 427; R.S.1943, § 55-201; Laws 1951, c. 184, § 1, p. 687; Laws 1953, c. 188, § 34, p. 607; Laws 1961, c. 275, § 1, p. 809.

**55-202 Rules and regulations; acceptance of gratuities; conditions.**

The Governor is hereby authorized to prescribe rules and regulations, not inconsistent with the provisions of sections 55-201 to 55-219, governing the enlistment, organization, administration, equipment, maintenance, training and discipline of such forces; *Provided*, such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law, governing and pertaining to the National Guard and the rules and regulations promulgated thereunder, and shall prohibit the acceptance of gifts, donations, gratuities or anything of value by such forces, except upon application to and authorization by the Adjutant General, or by any member of such forces from any individual, firm, association or corporation by reason of such membership. All applications for authority to make or offer a gift, donation, gratuity or anything of value to the forces shall become a permanent record of the Adjutant General's department and shall be open to public inspection.

**Source:** Laws 1941, c. 116, § 2, p. 447; C.S.Supp.,1941, § 55-402; Laws 1943, c. 126, § 2, p. 428; R.S.1943, § 55-202.

**55-203 Commissions; enlistments; qualifications.**

No person shall be appointed or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any military or naval organization of this state or of another state or of the United States.

**Source:** Laws 1941, c. 116, § 9, p. 449; C.S.Supp.,1941, § 55-409; R.S. 1943, § 55-203; Laws 1969, c. 459, § 79, p. 1606.

**55-204 Commissions; conviction of felony; effect; fingerprints.**

No one may be appointed as an officer who has been convicted of a felony. Fingerprints of all officers shall be taken.

**Source:** Laws 1941, c. 116, § 1, p. 447; C.S.Supp.,1941, § 55-401; Laws 1943, c. 126, § 1, p. 428; R.S.1943, § 55-204; Laws 1969, c. 459, § 80, p. 1607.

**55-205 Enlistment; term; oath.**

No person shall be enlisted for more than three years, but such enlistment may be renewed. The oath, to be taken upon enlistment in such forces, shall be substantially in the form prescribed for enlisted men of the National Guard, substituting the words Nebraska State Guard where necessary.

**Source:** Laws 1941, c. 116, § 11, p. 450; C.S.Supp.,1941, § 55-411; Laws 1943, c. 126, § 5, p. 429; R.S.1943, § 55-205.

**55-206 Officers; oath.**

The oath to be taken by officers commissioned in such forces shall be substantially in the form prescribed for officers of the National Guard, substituting the words Nebraska State Guard where necessary.

**Source:** Laws 1941, c. 116, § 10, p. 450; C.S.Supp.,1941, § 55-410; R.S.1943, § 55-206.

**55-207 Members; compensation.**

When called into the active service of the state, such forces shall receive pay, allowances, and benefits at the same rates prescribed by law for members of the National Guard. While in training at home station or engaged in other inactive service, such forces shall receive no compensation from the state.

**Source:** Laws 1941, c. 116, § 3, p. 448; C.S.Supp.,1941, § 55-403; Laws 1943, c. 126, § 3, p. 428; R.S.1943, § 55-207; Laws 1953, c. 188, § 35, p. 607; R.R.S.1943, § 55-207; Laws 1969, c. 459, § 81, p. 1607.

**55-208 Equipment; facilities.**

The Governor is hereby authorized to requisition or purchase from the Department of the Army or Department of the Air Force for the use of the armed forces of this state such arms, ammunition, clothing, and equipment as are necessary and authorized by the Department of the Army or Department of the Air Force under regulations; and to make available to such forces the facilities of state armories and their equipment and such other state premises and property as may be available. Where state facilities are not available, grounds, armories, and other buildings may be leased and maintained in the manner provided by law for the Nebraska National Guard.

**Source:** Laws 1941, c. 116, § 4, p. 448; C.S.Supp.,1941, § 55-404; Laws 1943, c. 126, § 4, p. 428; R.S.1943, § 55-208; Laws 1953, c. 188, § 36, p. 607.

**55-209 Repealed. Laws 1969, c. 459, § 82.****55-210 Repealed. Laws 1969, c. 459, § 82.**

**55-211 Repealed. Laws 1969, c. 459, § 82.****55-212 Service within state; exceptions.**

Such forces are not required to serve outside the boundaries of this state except (1) upon the request of the Governor of another state, in which case the Governor of this state may, in his discretion, order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state; and such forces may be recalled by the Governor at his discretion; and (2) any organization, unit or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment, or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; *Provided*, such other state shall have given authority by law for such pursuit by such forces of this state.

**Source:** Laws 1941, c. 116, § 5, p. 448; C.S.Supp.,1941, § 55-405; R.S. 1943, § 55-212.

**55-213 Fugitive; apprehension in another state; duty.**

Any such person who shall be apprehended or captured in such other state by an organization, unit or detachment of the forces of this state shall, without unnecessary delay, be surrendered to the military or police forces of the state in which he is taken or to the United States; but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

**Source:** Laws 1941, c. 116, § 5, p. 449; C.S.Supp.,1941, § 55-405; R.S. 1943, § 55-213.

**55-214 Fugitive to this state; capture authorized.**

Any military forces or organization, unit or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces, may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and are hereby authorized to arrest or capture such persons within this state while in fresh pursuit.

**Source:** Laws 1941, c. 116, § 6, p. 449; C.S.Supp.,1941, § 55-406; R.S. 1943, § 55-214.

**55-215 Fugitive to this state; apprehension; surrender to local authorities.**

Any such person who shall be captured or arrested by the military forces of such other state while in this state, shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law.

**Source:** Laws 1941, c. 116, § 6, p. 449; C.S.Supp.,1941, § 55-406; R.S. 1943, § 55-215.

**55-216 Fugitive to this state; sections, how construed.**

Nothing in sections 55-214 and 55-215 shall be construed so as to make unlawful any arrest in this state which would otherwise be lawful. Nothing contained in said sections shall be deemed to repeal, modify or conflict with any of the provisions of present or future laws of this state with relation to the fresh pursuit of criminals.

**Source:** Laws 1941, c. 116, § 6, p. 449; C.S.Supp.,1941, § 55-406; R.S. 1943, § 55-216.

**55-217 Federal service; treatment of guard members.**

Nothing in sections 55-201 to 55-219 shall be construed as authorizing such forces, or any part thereof, to be called, ordered or in any manner drafted as such, into the military service of the United States, but no person shall by reason of his enlistment or commission in any forces be exempted from military service under any law of the United States.

**Source:** Laws 1941, c. 116, § 7, p. 449; C.S.Supp.,1941, § 55-407; R.S. 1943, § 55-217.

**55-218 Civil organizations; not eligible for enlistment.**

No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group, shall be enlisted in such forces as an organization or unit.

**Source:** Laws 1941, c. 116, § 8, p. 449; C.S.Supp.,1941, § 55-408; R.S. 1943, § 55-218.

**55-219 Act, how cited.**

Sections 55-201 to 55-219 may be cited as the State Guard Act.

**Source:** Laws 1941, c. 116, § 14, p. 450; C.S.Supp.,1941, § 55-414; R.S.1943, § 55-219.

**ARTICLE 3**

**NEBRASKA ARMORY BOARD**

Section

- 55-301. Repealed. Laws 1971, LB 94, § 2.
- 55-302. Repealed. Laws 1971, LB 94, § 2.
- 55-303. Repealed. Laws 1971, LB 94, § 2.
- 55-304. Repealed. Laws 1971, LB 94, § 2.
- 55-305. Repealed. Laws 1971, LB 94, § 2.
- 55-306. Repealed. Laws 1971, LB 94, § 2.

**55-301 Repealed. Laws 1971, LB 94, § 2.**

**55-302 Repealed. Laws 1971, LB 94, § 2.**

**55-303 Repealed. Laws 1971, LB 94, § 2.**

**55-304 Repealed. Laws 1971, LB 94, § 2.**

**55-305 Repealed. Laws 1971, LB 94, § 2.**

**55-306 Repealed. Laws 1971, LB 94, § 2.****ARTICLE 4****NEBRASKA CODE OF MILITARY JUSTICE**

## Section

- 55-401. Code, how cited.
- 55-402. Terms, defined.
- 55-403. Code; persons subject to.
- 55-404. Fraudulent discharge; deserters; trial by court-martial.
- 55-405. Officer dismissed by order of Governor; trial by court-martial; convening a court-martial; powers; exceptions.
- 55-406. Code; applicability.
- 55-407. State Judge Advocate; appointment.
- 55-408. Staff Judge Advocates; duties; restrictions.
- 55-409. Apprehension of persons.
- 55-410. Apprehension of deserters.
- 55-411. Imposition of restraint.
- 55-412. Restraint of persons charged with offenses.
- 55-413. Confinement and imprisonment other than in guardhouse.
- 55-414. Reports and receiving of prisoners.
- 55-415. Manual for Courts-Martial, United States; applicability.
- 55-416. Commanding officer's nonjudicial punishment.
- 55-417. Court-martial, defined; jurisdiction.
- 55-418. Court-martial; jurisdiction.
- 55-419. Court-martial; jurisdiction; not exclusive.
- 55-420. Court-martial; who may convene.
- 55-421. Court-martial; members; eligibility.
- 55-422. Court-martial; military judge; qualifications.
- 55-423. Court-martial; trial counsel; defense counsel; detail.
- 55-424. Court-martial; reports; interpreters; detail.
- 55-425. Court-martial; absent members; new members; disability of military judge; effect.
- 55-426. Court-martial; pretrial; trial; procedures applicable.
- 55-427. Statute of limitations.
- 55-428. Witness; failure to appear; procedure.
- 55-429. Cruel and unusual punishment, prohibited.
- 55-430. Punishment; limitation.
- 55-431. Sentences; effective date.
- 55-432. Confinement; execution.
- 55-433. Sentences; reduction in grade.
- 55-434. Court-martial; error of law; effect.
- 55-435. Court-martial; record; action on.
- 55-436. Court-martial; records; reference.
- 55-437. Reconsideration; revision.
- 55-438. Rehearing.
- 55-439. Approval by the convening authority.
- 55-440. Disposition of records after review by the convening authority.
- 55-441. Court of Military Review; members; qualifications; appointment.
- 55-442. Court of Military Review; compensation.
- 55-443. Court of Military Review; powers.
- 55-444. Counsel for appellant; appointment.
- 55-445. Review of cases; procedure.
- 55-446. Sentence; execution.
- 55-447. Petition for new trial.
- 55-448. Principal, defined.
- 55-449. Restoration of rights, privileges, property.
- 55-450. Accessory after the fact, defined.
- 55-451. Conviction of lesser offense; when.
- 55-452. Attempt to commit an offense.
- 55-453. Conspiracy.

## Section

- 55-454. Solicitation for violation of code.
- 55-455. Fraudulent enlistment, appointment, or separation.
- 55-456. Unlawful enlistment, appointment, or separation.
- 55-457. Desertion.
- 55-458. Absence without leave.
- 55-459. Missing movement.
- 55-460. Contempt toward officials.
- 55-461. Disrespect toward superior commissioned officer.
- 55-462. Superior commissioned officer; assaulting; willfully disobeying.
- 55-463. Warrant officer, noncommissioned officer; insubordination.
- 55-464. Failure to obey order or resolution.
- 55-465. Cruelty; maltreatment.
- 55-466. Mutiny; sedition.
- 55-467. Resistance; breach of arrest; escape.
- 55-468. Seizure of abandoned property.
- 55-469. Military property of United States; loss, damage, destruction, or wrongful disposition.
- 55-470. Drunk or reckless driving.
- 55-471. Alcoholic liquor; drugs; consumption on duty.
- 55-472. Misbehavior of sentinel.
- 55-473. Malingering.
- 55-474. Riot or breach of peace.
- 55-475. Provoking speeches or gestures.
- 55-476. Perjury.
- 55-477. Conduct unbecoming an officer and a gentleman.
- 55-478. Obtaining property unlawfully.
- 55-479. Forgery.
- 55-480. Disorders and prejudice of good order and discipline.
- 55-481. Summarized administrative discipline for minor offenses; procedure; appeal; notice; contents.

**55-401 Code, how cited.**

Sections 55-401 to 55-481 shall be known and may be cited as the Nebraska Code of Military Justice.

**Source:** Laws 1969, c. 458, § 1, p. 1553; Laws 2016, LB754, § 7.

**55-402 Terms, defined.**

As used in the Nebraska Code of Military Justice, unless the context otherwise requires:

(1) Military forces shall mean the National Guard, also called the Nebraska National Guard and also hereinafter referred to as the Army National Guard and Air National Guard, and in addition thereto, the militia when called into active service of this state;

(2) Officer shall mean a commissioned officer including a commissioned warrant officer;

(3) Superior officer shall mean an officer superior in rank or command;

(4) Enlisted person shall mean any person who is serving in an enlisted grade in any military force;

(5) Accuser shall mean a person who signs and swears to charges, to any person who directs that charges nominally be signed and sworn by another, and to any other person who has an interest other than an official interest in prosecution of the accused;

(6) Military judge shall mean an official of court-martial detailed in accordance with section 55-422; and

(7) Code shall mean the Nebraska Code of Military Justice.

**Source:** Laws 1969, c. 458, § 2, p. 1553; Laws 2016, LB754, § 8.

**55-403 Code; persons subject to.**

The following persons are subject to this code: All members of the military forces of Nebraska not in the active service of the United States and who are under orders to be in the active service of the state as defined by section 55-104.

**Source:** Laws 1969, c. 458, § 3, p. 1554.

**55-404 Fraudulent discharge; deserters; trial by court-martial.**

(1) All persons discharged from the military forces of Nebraska subsequently charged with having fraudulently obtained such discharge shall, subject to the provisions of section 55-426, be subject to trial by court-martial on such charge and shall after apprehension be subject to this code while in the custody of the military forces for such trial. Upon conviction of such charge they shall be subject to trial by court-martial for all offenses under this code committed prior to the fraudulent discharge.

(2) Any person who has deserted from the military forces shall not be relieved from amenability to the jurisdiction of this code by virtue of a separation from any subsequent period of service.

**Source:** Laws 1969, c. 458, § 4, p. 1554.

**55-405 Officer dismissed by order of Governor; trial by court-martial; convening a court-martial; powers; exceptions.**

(1) When any officer, dismissed by order of the Governor, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the Governor, as soon as practicable, shall convene a court-martial to try such officer on the charges on which he was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on such charges, and he shall be held to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include the dismissal, the Adjutant General shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issuance.

(2) If the Governor fails to convene a court-martial within six months from the presentation of an application for trial under this section, the Adjutant General shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issuance.

(3) Where a discharge is substituted for a dismissal under the authority of this section, the Governor alone may reappoint the officer to such commissioned rank and precedence as in the opinion of the Governor such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the Governor may direct. All



time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowance.

(4) When an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the Governor, there shall not be a right to trial under this section.

**Source:** Laws 1969, c. 458, § 5, p. 1554.

**55-406 Code; applicability.**

This code shall be applicable in all places where military forces are present with any personnel who are on orders to be in the active service of the state.

**Source:** Laws 1969, c. 458, § 6, p. 1555.

**55-407 State Judge Advocate; appointment.**

The Adjutant General shall appoint as State Judge Advocate one of the Senior Staff Judge Advocates from either the Army National Guard or the Air National Guard.

**Source:** Laws 1969, c. 458, § 7, p. 1555.

**55-408 Staff Judge Advocates; duties; restrictions.**

(1) Convening authorities shall at all times communicate directly with their Staff Judge Advocates in matters relating to the administration of military justice; and the Staff Judge Advocate of any command is authorized to communicate directly with the State Judge Advocate.

(2) No person who has acted as a member, military judge, trial counsel, assistant trial counsel, defense counsel, or investigating officer in any case shall subsequently act as a Staff Judge Advocate to any reviewing authority upon the same case.

**Source:** Laws 1969, c. 458, § 8, p. 1555.

**55-409 Apprehension of persons.**

(1) Apprehension is the taking into custody of a person.

(2) Any person authorized under regulations governing the armed forces to apprehend persons subject to this code or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(3) All officers, warrant officers, and noncommissioned officers shall have authority to quell all quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part in the same.

**Source:** Laws 1969, c. 458, § 9, p. 1556.

**55-410 Apprehension of deserters.**

It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the State of Nebraska summarily to apprehend a deserter from the Nebraska National Guard or a member of the military forces absent without leave and deliver him into the custody of the Nebraska National Guard.

**Source:** Laws 1969, c. 458, § 10, p. 1556.

**55-411 Imposition of restraint.**

(1) Arrest is the restraint of a person by an order not imposed as a punishment for an offense directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(2) An enlisted person may be ordered into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this code. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

(3) An officer or warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

(4) No person shall be ordered into arrest or confinement except for probable cause.

(5) Nothing in this section shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

**Source:** Laws 1969, c. 458, § 11, p. 1556.

**55-412 Restraint of persons charged with offenses.**

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

**Source:** Laws 1969, c. 458, § 12, p. 1557.

**55-413 Confinement and imprisonment other than in guardhouse.**

Confinement and imprisonment other than in guardhouse, whether prior to, during or after trial by a military court, shall be executed in jails, penitentiaries or prisons designated by the Governor or by the Adjutant General for that purpose.

**Source:** Laws 1969, c. 458, § 13, p. 1557.

**55-414 Reports and receiving of prisoners.**

(1) No provost marshal, commander of a guard, warden, keeper or officer of a city or county jail or any other jail, penitentiary or prison designated by the Governor or the Adjutant General under section 55-413 shall refuse to receive or keep any prisoner committed to his charge by an officer of the military forces, when the committing officer furnishes a statement signed by him, of the offense charged against the prisoner.

(2) Every commander of a guard, warden, keeper or officer of a city or county jail or any other jail, penitentiary or prison designated by the Governor or the Adjutant General under section 55-413 to whose charge a prisoner is committed shall, within twenty-four hours after such commitment or as soon as he is relieved from guard, report to the commanding officer the name of such

prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

**Source:** Laws 1969, c. 458, § 14, p. 1557.

**55-415 Manual for Courts-Martial, United States; applicability.**

Insofar as it is not inconsistent with the provisions of this code, the Manual for Courts-Martial, United States, as established from time to time by Executive Order of the President of the United States shall be in force and effect and apply to the military forces of Nebraska.

**Source:** Laws 1969, c. 458, § 15, p. 1557.

**55-416 Commanding officer's nonjudicial punishment.**

(1) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of the code to an accused who demands trial by court-martial, but punishment may not be imposed upon any member of the military forces under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his or her command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than ten consecutive days; or

(ii) If imposed by a general officer in command, arrest in quarters for not more than fourteen consecutive days; forfeiture of not more than one-half of one month's pay per month for two months; restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than one-half of one month's pay per month for three months; and

(b) Upon other personnel of his or her command:

(i) Correctional custody for not more than seven consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties, for not more than ten consecutive days;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than ten consecutive days;

(vi) Detention of not more than fourteen days' pay; or

(vii) If imposed by an officer of the grade of major or above, correctional custody for not more than fourteen consecutive days; forfeiture of not more than one-half of one month's pay per month for two months; reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades; extra duties, including fatigue or other duties, for not more than fourteen consecutive days; restrictions to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period, but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, correctional custody is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which he or she is in charge such of the punishments authorized under subsection (2)(b) of this section as the Governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or his or her successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition, he or she may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He or she may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating:

- (a) Arrest in quarters to restriction;
- (b) Confinement on bread and water or diminished rations to correctional custody;
- (c) Correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or
- (d) Extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers his or her punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (a) Arrest in quarters for more than seven days;
- (b) Correctional custody for more than seven days;
- (c) Forfeiture of more than seven days' pay;
- (d) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (e) Extra duties for more than ten days;
- (f) Restriction for more than ten days; or
- (g) Detention of more than fourteen days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

(8) Any punishment authorized by this section which is measured in terms of days shall, when served in a status other than annual field training, be construed to mean consecutive active service days.

**Source:** Laws 1969, c. 458, § 16, p. 1557; Laws 2016, LB754, § 9.

#### **55-417 Court-martial, defined; jurisdiction.**

There shall be general, special, and summary courts-martial constituted like similar courts of the Army and Air Force of the United States. The jurisdiction of the courts-martial shall be as follows:

(1) General court-martial: Except as otherwise provided by law, a general court-martial may try any person subject to the Nebraska Code of Military Justice;

(2) Special court-martial: Except as otherwise provided by law, a special court-martial may try any person subject to the code when the punishment for the offense does not include a dishonorable discharge; and

(3) Summary court-martial: Except as otherwise provided by law, a summary court-martial may try any person subject to the code and it may adjudge any punishment not forbidden by the code except dishonorable discharge or bad-conduct discharge, confinement for more than one month, hard labor without

confinement for more than forty-five days, or forfeiture of more than two-thirds of one month's pay.

**Source:** Laws 1969, c. 458, § 17, p. 1561; Laws 1993, LB 170, § 6.

**55-418 Court-martial; jurisdiction.**

A court-martial as defined in the code shall have jurisdiction to try persons subject to the code for any offense defined and made punishable by the code and may, under such limitations and regulations as the Governor may prescribe, adjudge any of the following penalties:

- (1) Confinement at hard labor for not more than six months;
- (2) Hard labor without confinement for not more than three months;
- (3) Forfeitures or detentions of pay not exceeding two-thirds pay per month for six months;
- (4) Bad conduct discharge;
- (5) Dishonorable discharge;
- (6) Reprimand; or
- (7) Reduction of noncommissioned officers to the ranks, and to combine any two or more of such punishments in the sentence imposed.

**Source:** Laws 1969, c. 458, § 18, p. 1562; Laws 2016, LB754, § 11.

**55-419 Court-martial; jurisdiction; not exclusive.**

The jurisdiction of a court-martial is limited to the trial of persons accused of military offenses as described in the code. Persons subject to the code who are accused of offenses cognizable by the civil courts of this state or any other state where the military forces are present in that state may, upon accusation, be promptly surrendered to civil authorities for disposition, urgencies of the service considered. If the person subject to the code is accused of both a military offense under the code and a civil offense by the civil authorities, he or she shall be released to the civil authorities if the crime for which he or she is accused by the civil authorities carries a penalty in excess of the maximum penalty provided by the code.

**Source:** Laws 1969, c. 458, § 19, p. 1562; Laws 2016, LB754, § 12.

**55-420 Court-martial; who may convene.**

A court-martial may be convened by:

- (1) The Governor of Nebraska; or
- (2) Any other commanding officer in any of the military forces who is of the rank of major or above.

If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

**Source:** Laws 1969, c. 458, § 20, p. 1562.

**55-421 Court-martial; members; eligibility.**

- (1) Any commissioned officer is eligible to serve on any court-martial for the trial of any person who may lawfully be brought before such court for trial.

(2) Any warrant officer is eligible to serve on a court-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such court for trial.

(3)(a) Any enlisted member, who is not a member of the same unit as the accused, is eligible to serve on a court-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such court for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such request, the accused may not be tried by a court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the assembling authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(b) In this section, the word unit means any regularly organized body as defined by the Governor, but in no case may it be a body larger than a company, squadron, or body corresponding to one of them.

(4)(a) When it can be avoided, no member of the military forces may be tried by a court-martial any member of which is junior to him in rank or grade.

(b) When convening a court-martial, the convening authority shall detail as members thereof such members of the military forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the military forces is eligible to serve as a member of a court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

**Source:** Laws 1969, c. 458, § 21, p. 1563.

**55-422 Court-martial; military judge; qualifications.**

(1) The authority convening a court-martial shall detail a military judge thereto. A military judge shall preside over each open session of the court-martial to which he had been detailed.

(2) A military judge shall be a commissioned officer of the National Guard or a retired officer of the reserve components of the armed forces of the United States who is a member of the bar of the Supreme Court of Nebraska and who is certified to be qualified for such duty by the State Judge Advocate. The State Judge Advocate may recommend to the Adjutant General that he order to active duty retired personnel of the United States Armed Forces who are qualified to act as a military judge.

(3) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigation officer or a counsel in the same case.

(4) Neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness or efficiency of a military judge which relates to his performance of duty as such. A commis-

sioned officer who is certified to be qualified for duty as a military judge of a court-martial may perform such duties only when he is assigned and directly responsible to the State Judge Advocate and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a court-martial when such duties are assigned to him by or with the approval of the State Judge Advocate. The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

**Source:** Laws 1969, c. 458, § 22, p. 1564.

**55-423 Court-martial; trial counsel; defense counsel; detail.**

(1) For each court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a court-martial:

(a) Must be a judge advocate of the military forces, who is a graduate of an accredited law school and a member of the bar of the Supreme Court of Nebraska, or must be a member of the bar of a federal court or of the highest court of a state; and

(b) Must be certified as competent to perform such duties by the State Judge Advocate.

**Source:** Laws 1969, c. 458, § 23, p. 1565.

**55-424 Court-martial; reports; interpreters; detail.**

Under such regulations as the Governor may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. Any person appointed to interpret for deaf and hard of hearing persons shall be a licensed interpreter as defined in section 20-151.

**Source:** Laws 1969, c. 458, § 24, p. 1565; Laws 2002, LB 22, § 13.

**55-425 Court-martial; absent members; new members; disability of military judge; effect.**

(1) No member of a court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(2) Whenever a court-martial other than a court-martial composed of a military judge only is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial may proceed with the new



members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(3) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 55-426, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

**Source:** Laws 1969, c. 458, § 25, p. 1565.

**55-426 Court-martial; pretrial; trial; procedures applicable.**

The pretrial and trial procedures before a court-martial shall be in accordance with the procedures set forth in the Uniform Code of Military Justice of the United States, 10 U.S.C. chapter 47, for courts-martial as the same may be from time to time amended and according to regulations prescribed by the President of the United States as contemplated by such code except as to matters which are specifically covered in the Nebraska Code of Military Justice.

**Source:** Laws 1969, c. 458, § 26, p. 1566; Laws 1993, LB 170, § 7.

**55-427 Statute of limitations.**

A person charged with any offense is not liable to be tried by court-martial or punished under section 55-416 or 55-481 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction as set forth in the code.

**Source:** Laws 1969, c. 458, § 27, p. 1566; Laws 2016, LB754, § 13.

**55-428 Witness; failure to appear; procedure.**

(1) Any person not subject to the code who:

(a) Has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(b) Has been duly paid or tendered the fees of a witness at the rates allowed to witnesses attending the district courts of the State of Nebraska and mileage at the rate provided in section 81-1176 for state employees; and

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce, is guilty of a Class II misdemeanor.

(2) The Attorney General of Nebraska, upon the certification of the facts to him or her by the military court, commission, or board shall file an information against and prosecute any person violating this section.

(3) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

**Source:** Laws 1969, c. 458, § 28, p. 1566; Laws 1977, LB 39, § 55; Laws 1981, LB 204, § 97; Laws 2016, LB754, § 14.

**55-429 Cruel and unusual punishment, prohibited.**

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

**Source:** Laws 1969, c. 458, § 29, p. 1567.

**55-430 Punishment; limitation.**

The punishment which a court-martial may direct for an offense may not exceed such limits as the Governor may prescribe for that offense.

**Source:** Laws 1969, c. 458, § 30, p. 1567.

**55-431 Sentences; effective date.**

(1) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) All other sentences of courts-martial are effective on the date ordered executed.

(4) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising court-martial jurisdiction over the command to which the accused is currently assigned.

**Source:** Laws 1969, c. 458, § 31, p. 1567.

**55-432 Confinement; execution.**

Under such instructions as the Governor may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement as provided in section 55-413. Persons so confined in a penal or correctional institution not under the control of one of the military forces are subject to the same discipline and treatment as persons confined or committed by the courts of the State of Nebraska.

**Source:** Laws 1969, c. 458, § 32, p. 1568.

**55-433 Sentences; reduction in grade.**

(1) Unless otherwise provided in regulations to be prescribed by the Governor, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes:

- (a) A dishonorable or bad conduct discharge;
- (b) Confinement; or
- (c) Hard labor without confinement, reduces that member to pay grade E-1, effective on the date of that approval.

(2) If the sentence of a member who is reduced in pay grade under subdivision (a) of subsection (1) of this section is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (1) of this section, the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

**Source:** Laws 1969, c. 458, § 33, p. 1568.

**55-434 Court-martial; error of law; effect.**

(1) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

**Source:** Laws 1969, c. 458, § 34, p. 1569.

**55-435 Court-martial; record; action on.**

After a trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising court-martial jurisdiction.

**Source:** Laws 1969, c. 458, § 35, p. 1569.

**55-436 Court-martial; records; reference.**

The convening authority shall refer the record of each court-martial to his Staff Judge Advocate or legal officer, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction and shall be forwarded with the record to the State Judge Advocate.

**Source:** Laws 1969, c. 458, § 36, p. 1569.

**55-437 Reconsideration; revision.**

(1) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to

a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(a) For reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(b) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or

(c) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

**Source:** Laws 1969, c. 458, § 37, p. 1569.

#### **55-438 Rehearing.**

(1) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(2) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

**Source:** Laws 1969, c. 458, § 38, p. 1570.

#### **55-439 Approval by the convening authority.**

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

**Source:** Laws 1969, c. 458, § 39, p. 1570.

#### **55-440 Disposition of records after review by the convening authority.**

When the convening authority has taken final action in a court-martial case, he shall send the entire record, including his action thereon and the opinion or opinions of the Staff Judge Advocate or legal officer, to the State Judge Advocate.

**Source:** Laws 1969, c. 458, § 40, p. 1571.

#### **55-441 Court of Military Review; members; qualifications; appointment.**

The Adjutant General, upon the recommendation of the State Judge Advocate, shall appoint a Court of Military Review consisting of three members each to serve for a term of five years. The members shall be either civilians or commissioned officers of the military forces who are admitted to the bar of the

Supreme Court of Nebraska, except that any commissioned officer of the military forces who because of his position as a judge advocate could have a conflict in a review of any proceedings may not be appointed.

**Source:** Laws 1969, c. 458, § 41, p. 1571.

**55-442 Court of Military Review; compensation.**

Members of the Court of Military Review shall be paid the sum of fifty dollars per day when sitting and in addition shall be reimbursed for all expenses incurred as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1969, c. 458, § 42, p. 1571; Laws 1981, LB 204, § 98.

**55-443 Court of Military Review; powers.**

(1) The State Judge Advocate shall refer to the Court of Military Review the complete record of every case of trial by general or special court-martial within thirty days after receiving the record. The referral of the record in summary courts-martial shall be according to the manual for courts-martial adopted pursuant to section 55-426.

(2) In a case referred to it, the Court of Military Review may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(3) If the Court of Military Review sets aside the findings and sentence, it may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(4) The State Judge Advocate shall, unless there is to be further action by the Governor, instruct the convening authority to take action in accordance with the decision of the Court of Military Review. If the Court of Military Review has ordered a rehearing but the convening authority finds a rehearing impracticable, he or she may dismiss the charges.

(5) The State Judge Advocate shall prescribe uniform rules of procedure for the Court of Military Review.

(6) No judge of a Court of Military Review shall be eligible to review the record of any trial if such judge (a) served as investigating officer in the case, (b) served as a member of the court-martial before which such trial was conducted, or (c) served as military judge, trial or defense counsel, or reviewing officer of such trial.

**Source:** Laws 1969, c. 458, § 43, p. 1571; Laws 1993, LB 170, § 8.

**55-444 Counsel for appellant; appointment.**

In every case coming before the Court of Military Review, the Court of Appeals, or the Nebraska Supreme Court under the Nebraska Code of Military Justice, the State Judge Advocate shall appoint counsel to represent the accused and such counsel shall be qualified under section 55-423, except that the

accused shall have the right to be represented before the Court of Military Review by civilian counsel if provided by the accused.

**Source:** Laws 1969, c. 458, § 44, p. 1572; Laws 1992, LB 360, § 29.

**55-445 Review of cases; procedure.**

(1) The accused in cases reviewed by the Court of Military Review shall have thirty days from the time when he or she is notified of the decision of the Court of Military Review to petition the Court of Appeals for a review. Upon petition of the accused and for good cause shown, the appellate court may grant a review of the record. The appellate court shall act upon such petition within ninety days from receipt thereof.

(2) Upon filing the petition in the appellate court, the accused shall on the same date file a notice of his or her intention to appeal with the Court of Military Review, and the Court of Military Review shall within fifteen days forward the complete transcript of the case to the appellate court.

(3) In any case reviewed by it, the appellate court may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Military Review. In a case reviewed upon the petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The appellate court shall take action only with respect to matters of law.

(4) If the appellate court sets aside the findings and sentence, it may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(5) After it has acted on a case, the appellate court may direct the State Judge Advocate to return the record to the Court of Military Review for further review in accordance with the decision of the appellate court. Otherwise, unless there is to be further action by the Governor, the State Judge Advocate shall instruct the convening authority to take action in accordance with that decision. If the appellate court has ordered a rehearing but the convening authority finds a rehearing impracticable, the State Judge Advocate may dismiss the charges.

**Source:** Laws 1969, c. 458, § 45, p. 1572; Laws 1991, LB 732, § 119; Laws 1992, LB 360, § 30.

**55-446 Sentence; execution.**

No court-martial sentence may be executed until approved by the Governor. The Governor shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him.

**Source:** Laws 1969, c. 458, § 46, p. 1573.

**55-447 Petition for new trial.**

At any time within one year after approval by the convening authority of a court-martial sentence, the accused may petition the State Judge Advocate for a new trial on the ground of newly discovered evidence or fraud on the court. The State Judge Advocate shall refer the petition to the court-martial which last heard the case which shall review the petition and the record and report to the

convening authority its recommendation for grant or denial of new trial. If a new trial is recommended, the convening authority shall order a rehearing as provided in section 55-438. Upon filing of the petition for new trial, any proceedings pending upon appeal or review of sentence shall be dismissed.

**Source:** Laws 1969, c. 458, § 47, p. 1573.

**55-448 Principal, defined.**

Any person punishable under this code who:

(1) Commits an offense punishable by the provisions of this code, or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this code, is a principal.

**Source:** Laws 1969, c. 458, § 48, p. 1574.

**55-449 Restoration of rights, privileges, property.**

All rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

**Source:** Laws 1969, c. 458, § 49, p. 1574.

**55-450 Accessory after the fact, defined.**

Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 50, p. 1574.

**55-451 Conviction of lesser offense; when.**

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

**Source:** Laws 1969, c. 458, § 51, p. 1574.

**55-452 Attempt to commit an offense.**

(1) An act done with specific intent to commit an offense under the code, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense.

(2) Any person subject to the code who attempts to commit any offense punishable by the code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(3) Any person subject to the code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**Source:** Laws 1969, c. 458, § 52, p. 1574; Laws 2016, LB754, § 15.

**55-453 Conspiracy.**

Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 53, p. 1574.

#### **55-454 Solicitation for violation of code.**

Any person subject to this code who solicits or advises another or others to desert in violation of section 55-457 or mutiny in violation of section 55-466 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 54, p. 1575.

#### **55-455 Fraudulent enlistment, appointment, or separation.**

Any person who:

(1) Procures his own enlistment or appointment in the military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 55, p. 1575.

#### **55-456 Unlawful enlistment, appointment, or separation.**

Any person subject to this code who effects an enlistment or appointment in or a separation from the military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 56, p. 1575.

#### **55-457 Desertion.**

(1) Any member of the military forces who:

(a) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently; or

(b) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service, is guilty of desertion.

(2) Any commissioned officer of the military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 57, p. 1575.



**55-458 Absence without leave.**

Any member of the military forces who, without authority:

- (1) Fails to go to his appointed place of duty at the time prescribed;
- (2) Goes from that place; or
- (3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 58, p. 1576.

**55-459 Missing movement.**

Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 59, p. 1576.

**55-460 Contempt toward officials.**

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury of the United States, or the Governor or Legislature of any state, territory, commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 60, p. 1576.

**55-461 Disrespect toward superior commissioned officer.**

Any person subject to this code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 61, p. 1576.

**55-462 Superior commissioned officer; assaulting; willfully disobeying.**

Any person subject to this code who:

- (1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or
- (2) Willfully disobeys a lawful command of his superior commissioned officer, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 62, p. 1576.

**55-463 Warrant officer, noncommissioned officer; insubordination.**

Any warrant officer or enlisted member who:

- (1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office;
- (2) Willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or
- (3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 63, p. 1577.

**55-464 Failure to obey order or resolution.**

Any person subject to this code who:

- (1) Violates or fails to obey any lawful general order or regulation;
- (2) Having knowledge of any other lawful order issued by a member of the military forces, which it is his duty to obey, fails to obey the order; or
- (3) Is derelict in the performance of his duties, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 64, p. 1577.

**55-465 Cruelty; maltreatment.**

Any person subject to this code who is guilty of cruelty toward or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 65, p. 1577.

**55-466 Mutiny; sedition.**

(1) Any person subject to this code who:

(a) With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(b) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition; or

(c) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 66, p. 1577.

**55-467 Resistance; breach of arrest; escape.**

Any person subject to this code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 67, p. 1578.

**55-468 Seizure of abandoned property.**

(1) All persons subject to this code shall give notice and turn over to the proper authority without delay all abandoned property in their possession, custody or control.

(2) Any person subject to this code who:

(a) Fails to carry out the duties prescribed in subsection (1) of this section; or

(b) Engages in looting or pillaging, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 68, p. 1578.

**55-469 Military property of United States; loss, damage, destruction, or wrongful disposition.**

Any person subject to this code who, without proper authority:

- (1) Sells or otherwise disposes of;
- (2) Willfully or through neglect damages, destroys, or loses; or
- (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of, any military property of the United States or the State of Nebraska shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 69, p. 1578.

**55-470 Drunk or reckless driving.**

Any person subject to this code who operates any vehicle while under the influence of alcoholic liquor or any drug, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 70, p. 1578.

**55-471 Alcoholic liquor; drugs; consumption on duty.**

Any person subject to this code who is found under the influence of alcoholic liquor or any drug while on duty, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 71, p. 1579.

**55-472 Misbehavior of sentinel.**

Any sentinel or lookout who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 72, p. 1579.

**55-473 Malingering.**

Any person subject to this code who for the purpose of avoiding work, duty or service:

- (1) Feigns illness, physical disablement, mental lapse or derangement; or
- (2) Intentionally inflicts self-injury, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 73, p. 1579.

**55-474 Riot or breach of peace.**

Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 74, p. 1579.

**55-475 Provoking speeches or gestures.**

Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to this code shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 75, p. 1579.

**55-476 Perjury.**

Any person subject to this code who in a judicial proceeding or in a court of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 76, p. 1579.

**55-477 Conduct unbecoming an officer and a gentleman.**

Any commissioned officer or cadet, who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 77, p. 1579.

**55-478 Obtaining property unlawfully.**

Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind with intent permanently or temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of larceny. Any person found guilty of larceny shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 78, p. 1579.

**55-479 Forgery.**

Any person subject to this code who, with intent to defraud:

(1) Falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) Utters, offers, issues, or transfers such a writing, known by him to be so made or altered, is guilty of forgery and shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 79, p. 1580.

**55-480 Disorders and prejudice of good order and discipline.**

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken cognizance of by a court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

**Source:** Laws 1969, c. 458, § 80, p. 1580; Laws 2015, LB268, § 31; Referendum 2016, No. 426.

**Note:** The changes made to section 55-480 by Laws 2015, LB 268, section 31, have been omitted because of the vote on the referendum at the November 2016 general election.

**55-481 Summarized administrative discipline for minor offenses; procedure; appeal; notice; contents.**

(1) Any commanding officer, with regard to enlisted members, and any general officer, with regard to officers, may issue summarized administrative discipline for minor offenses. A minor offense shall be any offense which, under the Uniform Code of Military Justice of the United States, 10 U.S.C. chapter 47, or other military or civilian law or military custom, has a maximum penalty of confinement for one year or less.

(2) In accordance with subsection (1) of this section, any commanding officer or general officer, after consultation with a duly appointed judge advocate in the Nebraska National Guard, may impose one or more of the following disciplinary actions for minor offenses without the intervention of a court-martial:

(a) Upon officers:

(i) Restriction to certain specified limits, with or without suspension from duty, for up to seven days; or

(ii) Forfeiture of pay for up to one day; and

(b) Upon enlisted personnel:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than seven consecutive days;

(ii) Forfeiture of pay for up to one day; or

(iii) Extra duty not to exceed ten days.

(3) Consecutive summarized administrative discipline for the same offense or incident is not authorized.

(4) The officer who imposes the summarized administrative discipline as provided in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted discipline imposed. In addition, the officer or successor in command may, at any time, remit or mitigate any part or amount of the unexecuted discipline imposed and may set aside in whole or in part the discipline, whether executed or unexecuted, and restore all rights, privileges, and property affected.

(5) A person disciplined under this section who considers his or her discipline unjust or disproportionate to the offense may, within twenty-four hours of the announcement of findings and through the proper channel, appeal to the next superior authority or general officer. The appeal and record of the hearing shall be promptly forwarded and decided, but the person disciplined may in the meantime be required to undergo the discipline adjudged. The superior authority or general officer may exercise the same powers with respect to the discipline imposed as may be exercised under subsection (4) of this section by the officer who imposed the discipline. No appeal may be taken beyond the Adjutant General, and if the Adjutant General proposed the discipline under this section, the person may request reconsideration by the Adjutant General. Only one appeal or request for reconsideration shall be permitted.

(6) The imposition and enforcement of summarized administrative discipline under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and not

properly punishable under this section. The fact that summarized administrative discipline has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) Any summarized administrative discipline authorized by this section shall be executed within one year of the imposition of the discipline during any one or more periods of military duty.

(8) The enlisted member or officer shall be given twenty-four hours written notice of the intent to impose summarized administrative discipline under this section. Such notice shall include:

- (a) The offense committed;
- (b) A brief, written summary of the information upon which the allegations are based and notice that the enlisted member or officer may examine the statements and evidence;
- (c) The possible disciplinary actions;
- (d) An explanation that the rules of evidence do not apply at the hearing and that any testimony or evidence deemed relevant may be considered;
- (e) The date, time, and location of the hearing; and
- (f) The enlisted member's or officer's rights, which shall include:
  - (i) Twenty-four hour notice of the hearing and twenty-four hours to prepare for the hearing, which time shall run concurrently;
  - (ii) The right to appear personally before the officer proposing the summarized administrative discipline or the officer's delegate if the officer proposing the discipline is unavailable. The officer proposing such discipline must render findings based upon the record prepared by the delegate;
  - (iii) To be advised that he or she shall not be compelled to give evidence against himself or herself;
  - (iv) Notice as prescribed in this subsection;
  - (v) Examining the evidence presented or considered by the officer proposing the discipline;
  - (vi) Presenting matters in defense, extenuation, and mitigation orally, in writing, or both;
  - (vii) Presenting witnesses that are reasonably available. A witness is not reasonably available if his or her presence would unreasonably delay the hearing, there is a cost to the government, or military duty precludes a military member's participation in the opinion of such military member's commander;
  - (viii) Consultation prior to the hearing with a trial defense attorney appointed in the Nebraska National Guard, if he or she is reasonably available. A trial defense attorney is not reasonably available if his or her presence would unreasonably delay the hearing, there is a cost to the government to make him or her available, or other military duties or civilian employment precludes such trial defense attorney's participation, in the opinion of such trial defense attorney. Consultation with the trial defense attorney may be through personal contact, telephonic communication, or other electronic means available at no cost to the government;
  - (ix) To have an open hearing; and

(x) To waive in writing or at the hearing any or all of the enlisted member's or officer's rights.

(9) After considering the evidence, the officer proposing the discipline shall (a) announce the findings in writing with regard to each allegation, (b) inform the enlisted member or officer of the discipline imposed, if any, and (c) advise the enlisted member or officer of his or her right to appeal.

(10) The Adjutant General may adopt and promulgate regulations or policies to implement this section.

**Source:** Laws 2016, LB754, § 10.

## ARTICLE 5

### FAMILY MILITARY LEAVE ACT

#### Section

55-501. Act, how cited.

55-502. Terms, defined.

55-503. Family military leave authorized; conditions.

55-504. Employee exercising right to family military leave; rights; continuation of benefits.

55-505. Loss of certain employee benefits prohibited; act; how construed.

55-506. Employer; actions prohibited.

55-507. Civil action authorized; remedies authorized.

#### **55-501 Act, how cited.**

Sections 55-501 to 55-507 shall be known and may be cited as the Family Military Leave Act.

**Source:** Laws 2007, LB497, § 1.

#### **55-502 Terms, defined.**

For purposes of the Family Military Leave Act:

(1) Employee means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment. Employee does include an independent contractor. Employee includes an employee of a covered employer who has been employed by the same employer for at least twelve months and has been employed for at least one thousand two hundred fifty hours of service during the twelve-month period immediately preceding the commencement of the leave;

(2) Employee benefits means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer;

(3) Employer means (a) any individual, legal representative, partnership, limited liability company, corporation, association, business trust, or other business entity and (b) the State of Nebraska and political subdivisions; and

(4) Family military leave means leave requested by an employee who is the spouse or parent of a person called to military service lasting one hundred seventy-nine days or longer with the state or United States pursuant to the orders of the Governor or the President of the United States.

**Source:** Laws 2007, LB497, § 2.

**55-503 Family military leave authorized; conditions.**

(1) Any employer that employs between fifteen and fifty employees shall provide up to fifteen days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(2) An employer that employs more than fifty employees shall provide up to thirty days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(3) The employee shall give at least fourteen days' notice of the intended date upon which the family military leave will commence if leave will consist of five or more consecutive work days. Where able, the employee shall consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking family military leave for less than five consecutive days shall give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.

**Source:** Laws 2007, LB497, § 3.

**55-504 Employee exercising right to family military leave; rights; continuation of benefits.**

(1) Any employee who exercises the right to family military leave under the Family Military Leave Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. This section does not apply if the employer proves that the employee was not restored because of conditions unrelated to the employee's exercise of rights under the act.

(2) During any family military leave taken under the act, the employer shall make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

**Source:** Laws 2007, LB497, § 4.

**55-505 Loss of certain employee benefits prohibited; act; how construed.**

(1) Taking family military leave under the Family Military Leave Act shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

(2) Nothing in the act shall be construed to affect an employer's obligation to comply with any collective-bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under the act.

(3) The family military leave rights provided under the act shall not be diminished by any collective-bargaining agreement or employee benefit plan.

(4) Nothing in the act shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under the act.

**Source:** Laws 2007, LB497, § 5.



**55-506 Employer; actions prohibited.**

(1) An employer shall not interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the Family Military Leave Act.

(2) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right provided under the act.

(3) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee for opposing any practice made unlawful by the act.

**Source:** Laws 2007, LB497, § 6.

**55-507 Civil action authorized; remedies authorized.**

A civil action may be brought in the district court having jurisdiction by an employee to enforce the Family Military Leave Act. The district court may enjoin any act or practice that violates or may violate the Family Military Leave Act and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce the act.

**Source:** Laws 2007, LB497, § 7.

**ARTICLE 6****COMMISSION ON MILITARY AND VETERAN AFFAIRS**

## Section

- 55-601. Commission on Military and Veteran Affairs; created; members; terms; vacancy.  
 55-602. Commission on Military and Veteran Affairs; powers and duties.  
 55-603. Commission on Military and Veteran Affairs; officers; meetings; records.  
 55-604. Commission on Military and Veteran Affairs; expenses.  
 55-605. Military affairs liaison; duties.  
 55-606. Report; contents.

**55-601 Commission on Military and Veteran Affairs; created; members; terms; vacancy.**

(1) The Commission on Military and Veteran Affairs is created. The commission shall consist of the following voting members:

- (a) The Director of Economic Development;
- (b) The Adjutant General or his or her designee;
- (c) The Director of Veterans' Affairs; and

(d) Three residents of the State of Nebraska, one from each congressional district. At least one of the three residents shall have current or prior military experience and at least one shall have a background in business.

(2) The commission shall have the following nonvoting, ex officio members:

- (a) The veterans' program coordinator of the Department of Labor;
- (b) The chair of the State Committee of Employer Support of the Guard and Reserve;
- (c) The commander of the 55th Wing of the Air Combat Command or his or her designee;
- (d) The commander of the United States Strategic Command or his or her designee; and

(e) The commander of the 557th Weather Wing of the United States Air Force or his or her designee.

(3) The members of the commission described in subdivision (1)(d) of this section shall be appointed by the Governor. The Governor shall designate the initial terms of the members described in subdivision (1)(d) of this section so that one member serves for a term of two years, one member serves for a term of three years, and one member serves for a term of four years. Succeeding appointments shall be for terms of four years and shall be made in the same manner as the original appointments. The terms of the members shall begin on October 1 of the year in which they are appointed unless appointed to fill a vacancy. Appointments to fill a vacancy, occurring other than by the expiration of a term of office, shall be made for the unexpired term of the member whose office is vacated.

**Source:** Laws 2016, LB754, § 1; Laws 2019, LB138, § 2.

**55-602 Commission on Military and Veteran Affairs; powers and duties.**

The Commission on Military and Veteran Affairs shall have the authority to receive and administer funds from state, federal, and other sources. Additionally, the commission shall:

- (1) Address matters of military significance to Nebraska;
- (2) Maintain a cooperative and constructive relationship between state agencies and the military and veteran entities in Nebraska as necessary to ensure coordination and implementation of unified and comprehensive statewide strategies involved with, or affected by, the military;
- (3) Focus on and, when designated, serve as lead agency on:
  - (a) Defense economic adjustment and transition information and activities;
  - (b) Exploring operating costs, missions, and strategic value of federal military installations located in the state;
  - (c) Employment issues for communities that depend on defense bases and defense-related businesses; and
  - (d) Assistance provided to communities that have experienced a defense-related closure or realignment;
- (4) Advise the Governor, the Legislature, and other appropriate governmental officials on all matters in which the military services and the state have mutual interests, needs, and concerns;
- (5) Promote and optimize state and United States Department of Defense initiatives that will improve the military value of the Nebraska National Guard, active and reserve military force structure and installations, and the quality of life for military personnel residing in Nebraska;
- (6) Partner with local communities to conduct ongoing analyses of current and proposed changes to the mission, military force structure, and alignment of the United States Department of Defense;
- (7) Recommend state, federal, and local economic development projects to promote, foster, and support economic progress through a military presence in Nebraska;
- (8) Assist the private sector in developing derivative investments, employment, and educational opportunities associated with high technology programs and activities at Nebraska's military installations;

(9) Partner with local communities to develop methods to improve private and public employment opportunities for former members of the military and their families residing in this state; and

(10) Identify and support ways to provide sound infrastructure, adequate housing, education, and transition support into Nebraska's workforce for military members and their families, retired military personnel, and veterans.

**Source:** Laws 2016, LB754, § 2.

**55-603 Commission on Military and Veteran Affairs; officers; meetings; records.**

The Commission on Military and Veteran Affairs shall elect a chairperson, vice-chairperson, and secretary from among its members.

The commission shall meet two times each year at such times and places as shall be determined by the chairperson and shall keep a record of its proceedings. The chairperson may call special meetings at any time he or she deems necessary. The secretary shall mail written notice of the time and place of all meetings in advance to each voting and nonvoting, ex officio member of the commission. The secretary shall also provide notice of all meetings as provided under section 84-1411.

**Source:** Laws 2016, LB754, § 3.

**55-604 Commission on Military and Veteran Affairs; expenses.**

Members of the Commission on Military and Veteran Affairs shall receive no compensation for their services as members of the commission other than their salary, but shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 2016, LB754, § 4; Laws 2020, LB381, § 49.

**55-605 Military affairs liaison; duties.**

(1) The Department of Veterans' Affairs shall hire a military affairs liaison for the Commission on Military and Veteran Affairs and fix his or her salary. The department shall provide administrative support to the commission as needed. The liaison shall have military experience and serve at the pleasure of the commission. The liaison shall not be subject to Chapter 81, article 13.

(2) The liaison shall be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned by the commission.

(3) The commission may obtain the services of experts and consultants as necessary to carry out its duties.

**Source:** Laws 2016, LB754, § 5.

**55-606 Report; contents.**

The Commission on Military and Veteran Affairs shall prepare an annual report summarizing the military assets of Nebraska, including installations and missions, and the economic impact of the military assets in Nebraska. The report shall also include recommendations for preserving and sustaining military assets and missions existing in Nebraska and recommendations for actions which the state can take to encourage expanding such assets and missions. The

commission shall submit the report electronically to the Legislature, the Governor, and the commanding officer of every military base in Nebraska on or before November 15 of each year.

**Source:** Laws 2016, LB754, § 6.

**ARTICLE 7**

**CONSUMER PROTECTION AND CIVIL RELIEF**

Section

55-701. Terms, defined.

55-702. Servicemember; termination of contract or lease; notice; refund of fees or charges; section, how construed.

55-703. Civil action; relief available.

55-704. Nebraska National Guard; duties.

**55-701 Terms, defined.**

For purposes of sections 55-701 to 55-704:

(1) Military service means:

(a) In the case of a servicemember who is a member or reserve member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, full-time duty in the active military service of the United States, including:

(i) Full-time training duty;

(ii) Annual training duty; and

(iii) Attendance while at a school designated as a service school by federal law or by the secretary of the military department concerned;

(b) In the case of a member or reserve member of the Nebraska National Guard, service under a call to active service or duty authorized by:

(i) The President of the United States or the Secretary of Defense for a period of more than thirty days in response to a national emergency declared by the President of the United States; or

(ii) The Governor for a period of more than thirty consecutive days;

(c) In the case of a servicemember who is a commissioned officer of the United States Public Health Service or the National Oceanic and Atmospheric Administration, active service; or

(d) Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause; and

(2) Servicemember means an individual engaged in military service.

**Source:** Laws 2018, LB682, § 1.

**55-702 Servicemember; termination of contract or lease; notice; refund of fees or charges; section, how construed.**

(1) In addition to the rights and protections regarding consumer transactions, contracts, and service providers included under the federal Servicemembers Civil Relief Act, a servicemember may terminate a contract described in subsection (2) of this section at any time after the date the servicemember receives military orders to relocate for a period of service of at least ninety days to a location that is not included in or covered under the contract.

(2) This section applies to any contract to provide:

- (a) Telecommunications services;
- (b) Internet services;
- (c) Television services;
- (d) Athletic club or gym memberships;
- (e) Satellite radio services; or

(f) A lease of residential rental property, notwithstanding any provision to the contrary in the Uniform Residential Landlord and Tenant Act or any other provision of law, if the servicemember is required to move into government-owned or leased housing. This subdivision does not apply to a lease of residential rental property in which a spouse of a servicemember is a tenant in such residential rental property and government-owned or leased housing is not available to such spouse.

(3) Termination of a contract must be made by delivery of a written or electronic notice of the termination and a copy of the servicemember's military orders to the service provider or lessor.

(4) For any contract terminated under this section, the service provider or lessor under the contract shall not impose an early termination charge.

(5) Any tax or any other obligation or liability of the servicemember that, in accordance with the terms of the contract, is due and unpaid at the time of termination of the contract shall be paid by the servicemember.

(6) If after termination provided under this section the servicemember resubscribes to a service provided under a contract described in subdivisions (2)(a) through (e) of this section or reenters into a lease under a contract described in subdivision (2)(f) of this section during the ninety-day period immediately following the servicemember's return from service, the service provider or lessor may not impose any service fees or charges other than the usual and customary fees and charges imposed on any other subscriber for the installation or acquisition of customer equipment or imposed on any other lessee for the rental of residential real property. A servicemember may not be charged a penalty, fee, loss of deposit, or any other additional cost because of such termination, resubscription, or rental.

(7) Not later than sixty days after the effective date of the termination of a contract described in subsection (2) of this section, the service provider or lessor under the contract shall refund to the servicemember all fees or charges paid for services or rental that extend past the termination date of the contract. Upon the termination of a rental agreement described in subdivision (2)(f) of this section, the servicemember is entitled to the return of any deposit or prepaid rent subject to section 76-1416.

(8) In the case of a rental agreement described in subdivision (2)(f) of this section that provides for monthly payment of rent, termination of the rental agreement is effective thirty days after the first date on which the next rental payment is due and payable after the date on which the notice of termination under subsection (3) of this section is delivered. In the case of any other rental agreement described in subdivision (2)(f) of this section, termination of the rental agreement is effective on the last day of the month following the month in which the notice of termination is delivered.

(9) This section shall not be construed so as to impair or affect the obligation of any lawful contract in existence prior to July 19, 2018.

**Source:** Laws 2018, LB682, § 2.

Cross References

Uniform Residential Landlord and Tenant Act, see section 76-1401.

**55-703 Civil action; relief available.**

(1) A civil action may be brought in any court with jurisdiction by the Attorney General against any person that knowingly or intentionally violates any provision of section 55-702. The court may:

- (a) Issue an injunction;
- (b) Order the person to make a payment of money unlawfully received from, or required to be refunded to, one or more servicemembers;
- (c) Order the person to pay to the state the reasonable costs of the Attorney General's investigation and prosecution related to the action; and
- (d) Order the person to pay a civil penalty not greater than five thousand dollars per violation.

(2) Relief may not be granted under subsection (1) of this section if relief for the violation has already been granted under the federal Servicemembers Civil Relief Act.

**Source:** Laws 2018, LB682, § 3.

**55-704 Nebraska National Guard; duties.**

The Nebraska National Guard shall provide to its members a list of their rights under sections 55-702 and 55-703 and under the federal Servicemembers Civil Relief Act.

**Source:** Laws 2018, LB682, § 4.

**ARTICLE 8**

**UNITED STATES SPACE COMMAND HEADQUARTERS**

Section

55-801. United States Space Command Headquarters Assistance Fund; created; use; investment.

**55-801 United States Space Command Headquarters Assistance Fund; created; use; investment.**

The United States Space Command Headquarters Assistance Fund is created. The fund shall be used to contribute to the construction of the United States Space Command headquarters if the State of Nebraska is selected as the site for the headquarters. The Adjutant General of the State of Nebraska shall administer the fund. The fund shall consist of transfers authorized by the Legislature and any gifts, grants, or bequests from any source, including federal, state, public, and private sources, for such purposes. 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 2021, LB384, § 27.  
Effective date April 27, 2021.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.





## CHAPTER 56

### MILLDAMS

Article.

1. Acquisition of Dams and Sites. Repealed.
2. Toll Mills. Repealed.

#### ARTICLE 1

#### ACQUISITION OF DAMS AND SITES

Section

- 56-101. Repealed. Laws 2017, LB176, § 1.
- 56-102. Repealed. Laws 1951, c. 101, § 127.
- 56-103. Repealed. Laws 1951, c. 101, § 127.
- 56-104. Repealed. Laws 1951, c. 101, § 127.
- 56-105. Repealed. Laws 1951, c. 101, § 127.
- 56-106. Repealed. Laws 1951, c. 101, § 127.
- 56-107. Repealed. Laws 1951, c. 101, § 127.
- 56-108. Repealed. Laws 1951, c. 101, § 127.
- 56-109. Repealed. Laws 1951, c. 101, § 127.
- 56-110. Repealed. Laws 1951, c. 101, § 127.
- 56-111. Repealed. Laws 1951, c. 101, § 127.
- 56-112. Repealed. Laws 1951, c. 101, § 127.
- 56-113. Repealed. Laws 1951, c. 101, § 127.
- 56-114. Repealed. Laws 1951, c. 101, § 127.
- 56-115. Repealed. Laws 2017, LB176, § 1.
- 56-116. Repealed. Laws 1951, c. 101, § 127.
- 56-117. Repealed. Laws 1951, c. 101, § 127.
- 56-118. Repealed. Laws 1951, c. 101, § 127.
- 56-119. Repealed. Laws 1951, c. 101, § 127.
- 56-120. Repealed. Laws 1951, c. 101, § 127.
- 56-121. Repealed. Laws 1951, c. 101, § 127.
- 56-122. Repealed. Laws 1951, c. 101, § 127.
- 56-123. Repealed. Laws 1951, c. 101, § 127.
- 56-124. Repealed. Laws 2017, LB176, § 1.
- 56-125. Repealed. Laws 2017, LB176, § 1.
- 56-126. Repealed. Laws 2017, LB176, § 1.
- 56-127. Repealed. Laws 2017, LB176, § 1.

**56-101 Repealed. Laws 2017, LB176, § 1.**

**56-102 Repealed. Laws 1951, c. 101, § 127.**

**56-103 Repealed. Laws 1951, c. 101, § 127.**

**56-104 Repealed. Laws 1951, c. 101, § 127.**

**56-105 Repealed. Laws 1951, c. 101, § 127.**

**56-106 Repealed. Laws 1951, c. 101, § 127.**

**56-107 Repealed. Laws 1951, c. 101, § 127.**

**56-108 Repealed. Laws 1951, c. 101, § 127.**

- 56-109 Repealed. Laws 1951, c. 101, § 127.**
- 56-110 Repealed. Laws 1951, c. 101, § 127.**
- 56-111 Repealed. Laws 1951, c. 101, § 127.**
- 56-112 Repealed. Laws 1951, c. 101, § 127.**
- 56-113 Repealed. Laws 1951, c. 101, § 127.**
- 56-114 Repealed. Laws 1951, c. 101, § 127.**
- 56-115 Repealed. Laws 2017, LB176, § 1.**
- 56-116 Repealed. Laws 1951, c. 101, § 127.**
- 56-117 Repealed. Laws 1951, c. 101, § 127.**
- 56-118 Repealed. Laws 1951, c. 101, § 127.**
- 56-119 Repealed. Laws 1951, c. 101, § 127.**
- 56-120 Repealed. Laws 1951, c. 101, § 127.**
- 56-121 Repealed. Laws 1951, c. 101, § 127.**
- 56-122 Repealed. Laws 1951, c. 101, § 127.**
- 56-123 Repealed. Laws 1951, c. 101, § 127.**
- 56-124 Repealed. Laws 2017, LB176, § 1.**
- 56-125 Repealed. Laws 2017, LB176, § 1.**
- 56-126 Repealed. Laws 2017, LB176, § 1.**
- 56-127 Repealed. Laws 2017, LB176, § 1.**

**ARTICLE 2  
TOLL MILLS**

Section

- 56-201. Repealed. Laws 1980, LB 741, § 1.
- 56-202. Repealed. Laws 1980, LB 741, § 1.
- 56-203. Repealed. Laws 1980, LB 741, § 1.
- 56-204. Repealed. Laws 1980, LB 741, § 1.
- 56-205. Repealed. Laws 1980, LB 741, § 1.
- 56-206. Repealed. Laws 1980, LB 741, § 1.
- 56-207. Repealed. Laws 1980, LB 741, § 1.

- 56-201 Repealed. Laws 1980, LB 741, § 1.**
- 56-202 Repealed. Laws 1980, LB 741, § 1.**
- 56-203 Repealed. Laws 1980, LB 741, § 1.**
- 56-204 Repealed. Laws 1980, LB 741, § 1.**
- 56-205 Repealed. Laws 1980, LB 741, § 1.**

**TOLL MILLS**

**§ 56-207**

**56-206 Repealed. Laws 1980, LB 741, § 1.**

**56-207 Repealed. Laws 1980, LB 741, § 1.**



## CHAPTER 57

### MINERALS, OIL, AND GAS

#### Article.

1. State and County Aid to Development. 57-101 to 57-107.
2. Oil, Gas, and Mineral Interests. 57-201 to 57-239.
3. Oil Field Equipment Lien. 57-301 to 57-304.
4. Easements for Oil and Gas Pipelines. 57-401, 57-402.
5. Liquefied Petroleum Gas. 57-501 to 57-517.
6. Underground Storage of Natural Gas. 57-601 to 57-609.
7. Oil and Gas Severance Tax. 57-701 to 57-719.
8. Oil and Gas Liens. 57-801 to 57-820.
9. Oil and Gas Conservation. 57-901 to 57-923.
10. Process on Oil and Gas Explorers. 57-1001, 57-1002.
11. Eminent Domain for Pipelines. 57-1101 to 57-1106.
12. Uranium Severance Tax. 57-1201 to 57-1214.
13. Natural Gas Utility Service Areas. Transferred.
14. Major Oil Pipeline Siting Act. 57-1401 to 57-1413.
15. Oil Pipeline Projects. 57-1501 to 57-1503.
16. Nebraska Geologic Storage of Carbon Dioxide Act. 57-1601 to 57-1624.

#### ARTICLE 1

#### STATE AND COUNTY AID TO DEVELOPMENT

#### Section

- |            |   |
|------------|---|
| 57-101.    | Coal and iron development; state aid; conditions.               |
| 57-102.    | Repealed. Laws 1949, c. 175, § 4.                               |
| 57-102.01. | Repealed. Laws 1951, c. 190, § 1.                               |
| 57-102.02. | Repealed. Laws 1951, c. 190, § 1.                               |
| 57-102.03. | Repealed. Laws 1951, c. 190, § 1.                               |
| 57-103.    | Repealed. Laws 1951, c. 190, § 1.                               |
| 57-104.    | Prospectors; specimens preserved.                               |
| 57-105.    | Former discoveries; no aid given.                               |
| 57-106.    | Coal development; county aid; petition; election; bonds; limit. |
| 57-107.    | Bonds; election; issuance; payment; laws applicable.            |

#### **57-101 Coal and iron development; state aid; conditions.**

When it shall be made apparent to the Governor of Nebraska, by affidavit or otherwise, by the owner or owners thereof, that a vein of coal, not less than twenty-six inches in thickness, and of sufficient capacity to pay to mine, and within such distance from the surface that it can be worked by modern methods, has been discovered, or a vein or veins of good iron ore eighteen inches thick, it shall be the duty of the Governor to appoint a suitable person to examine the same, whose duty it shall be to report the probable extent and capacity of the vein or veins, all expense for such examination to be paid by the owner or owners of the mine. The report being satisfactory to the Governor, he shall direct the Director of Administrative Services to draw an order on the State Treasurer for the sum of four thousand dollars, to be paid to the owner or owners of such mine of coal, and of two thousand dollars to be paid for a vein of iron ore eighteen inches thick. If the vein of coal discovered should be three feet thick and of the required capacity, the sum to be paid shall be five

thousand dollars. Such orders shall be paid out of the General Fund of the state treasury, as above directed.

**Source:** Laws 1903, c. 63, § 1, p. 359; R.S.1913, § 4008; C.S.1922, § 3411; C.S.1929, § 57-101; R.S.1943, § 57-101; Laws 1969, c. 461, § 1, p. 1610.

Before bounties can be paid, there must be a specific appropriation made for same. State ex rel. Norfolk Beet-Sugar Co. v. Moore, 50 Neb. 88, 69 N.W. 373 (1896).

**57-102 Repealed. Laws 1949, c. 175, § 4.**

**57-102.01 Repealed. Laws 1951, c. 190, § 1.**

**57-102.02 Repealed. Laws 1951, c. 190, § 1.**

**57-102.03 Repealed. Laws 1951, c. 190, § 1.**

**57-103 Repealed. Laws 1951, c. 190, § 1.**

**57-104 Prospectors; specimens preserved.**

It shall be the duty of the persons prospecting for coal, any mineral, ore, crude oil, or gas, carefully to preserve specimens from each stratum through which the shafts are sunk, or borings are made; and to deposit the same, properly labeled, in care of the proper department of the state for the future use of the commonwealth.

**Source:** Laws 1903, c. 63, § 4, p. 361; R.S.1913, § 4011; C.S.1922, § 3414; C.S.1929, § 57-104; R.S.1943, § 57-104; Laws 1978, LB 661, § 1; Laws 1980, LB 709, § 1.

**57-105 Former discoveries; no aid given.**

The provisions of sections 57-101 to 57-105 shall not apply to any veins of coal or iron ore already discovered nor to any oil wells or gas wells already producing, nor shall the provisions of said sections apply to the discovery of the same vein of coal or iron ore, or oil pool or gas field already discovered, nor shall any reward specified under the terms of said sections be paid for a second discovery of the same veins, pools or fields within the limits of the same county.

**Source:** Laws 1903, c. 63, § 5, p. 361; R.S.1913, § 4012; C.S.1922, § 3415; C.S.1929, § 57-105; R.S.1943, § 57-105.

**57-106 Coal development; county aid; petition; election; bonds; limit.**

The county board of each county in this state is hereby authorized and required to submit to the legal voters thereof, on presentation of a petition of twenty resident freeholders of the county, the proposition to issue bonds, not exceeding twenty thousand dollars, the proceeds of which shall be applied to defray the expenses of boring and prospecting for coal in the county under the direction of the county board thereof; and such board is hereby authorized to issue the bonds for such purposes, in case the vote shall be favorable to the proposition; *Provided, however*, the county board may, in its discretion, refuse to submit such inquiry to a vote of the people until the next general election after the presentation of such petition.

**Source:** G.S.1873, c. 13, § 1, p. 249; R.S.1913, § 4013; C.S.1922, § 3416; C.S.1929, § 57-106; R.S.1943, § 57-106.

**57-107 Bonds; election; issuance; payment; laws applicable.**

So far as applicable sections 10-401 to 10-405 shall govern the proceedings to submit such proposition, issue bonds, and provide for payment of the same; *Provided*, section 57-106 shall not apply to the counties of Burt, Washington and Sarpy.

**Source:** G.S.1873, c. 13, § 2, p. 250; R.S.1913, § 4014; C.S.1922, § 3417; C.S.1929, § 57-107; R.S.1943, § 57-107.

**ARTICLE 2****OIL, GAS, AND MINERAL INTERESTS****Cross References**

Foreign corporations, oil leases, rights of, see section 76-404.

Section	
57-201.	Oil, gas, and mineral leases; forfeiture; duty of lessee to surrender.
57-202.	Forfeited lease; failure to surrender; notice by landowner; form.
57-203.	Forfeited lease; failure to surrender; publication of notice; landowner's affidavit; contents.
57-204.	Lease; claim of nonforfeiture by lessee; notice to register of deeds; effect; effect of failure to give notice.
57-205.	Forfeited lease; lessee's failure to execute surrender; remedy of lessor.
57-206.	Lease; discharge by entry on margin of record; procedure.
57-207.	Lease; discharge by endorsement on indenture; procedure.
57-208.	Lease; filing with register of deeds; effect; contingent extension provision; affidavit of happening of contingency; filing; effect.
57-209.	Lease; discharge of record; demand; requisite for action by landowner, when.
57-210.	Oil or gas lease; authority of executor, administrator, guardian, conservator, or trustee to execute; ratification of unauthorized or defective lease; how obtained.
57-211.	Lease; authority of executor, administrator, guardian, conservator, or trustee to execute; how obtained; petition; contents.
57-212.	Lease; authority of executor, administrator, guardian, conservator, or trustee to execute; notice; hearing; procedure; order.
57-212.01.	Lease; authority of executor, administrator, guardian, or trustee to execute; petition; unknown owners, heirs, devisees, or legatees; procedure.
57-213.	Repealed. Laws 1951, c. 192, § 3.
57-214.	Repealed. Laws 1959, c. 262, § 22.
57-215.	Repealed. Laws 1959, c. 262, § 22.
57-216.	Repealed. Laws 1959, c. 262, § 22.
57-217.	Repealed. Laws 1959, c. 262, § 22.
57-218.	Oil and gas leases; authority to issue.
57-219.	Oil and gas leases; annual delay rentals; royalties.
57-220.	Oil and gas leases; sale at public auction; notice.
57-221.	Oil and gas leases; pooling of acreage authorized; allocation of production.
57-222.	Oil and gas leases; life tenant; trustee for remaindermen; appointment.
57-223.	Oil and gas leases; trustee for remaindermen; execute when authorized by court; procedure.
57-224.	Oil and gas leases; trustee for remaindermen; invest income from royalties.
57-225.	Repealed. Laws 1959, c. 262, § 22.
57-226.	Repealed. Laws 1959, c. 262, § 22.
57-227.	Mineral and royalty interests; separate interests; effect of foreclosure of lien for taxes.
57-228.	Mineral interest; severed; termination; suit in equity; defendants.
57-229.	Mineral interests; severed; abandonment; extension; procedure.
57-230.	Mineral interests; severed; abandoned; judgment.
57-231.	Mineral interests; severed; limitation of action.
57-232.	Repealed. Laws 1971, LB 636, § 2.
57-233.	Repealed. Laws 1971, LB 636, § 2.

- Section  
 57-234. Fractional interests in oil, gas, or hydrocarbon units or fields; taxation; violations; penalty.  
 57-235. Terms, defined.  
 57-236. Mineral interests; severed; placed on tax list; application; contents.  
 57-237. Mineral interest; separate listing; application; when.  
 57-238. Mineral interest; separate listing; appeal.  
 57-239. Tax Commissioner; rules and regulations; prescribe forms.

**57-201 Oil, gas, and mineral leases; forfeiture; duty of lessee to surrender.**

When any oil, gas, or other mineral lease heretofore or hereafter given on land situated in any county of Nebraska, and recorded therein, shall become forfeited, it shall be the duty of the lessee, his successors or assigns, within thirty days after the date of the forfeiture, to have such lease surrendered in writing, such surrender to be signed and acknowledged by the party making the same and placed on record in the county where the leased land is situated without cost to the owner thereof.

**Source:** Laws 1925, c. 133, § 1, p. 349; C.S.1929, § 57-201; R.S.1943, § 57-201; Laws 1955, c. 214, § 1, p. 600.

Statute outlines steps to terminate lease. *Long v. Magnolia Petroleum Co.*, 166 Neb. 410, 89 N.W.2d 245 (1958). Failure to drill or pay rentals makes statute operative on recorded leases. *Valentine Oil Co. v. Powers*, 157 Neb. 87, 59 N.W.2d 160 (1953).

**57-202 Forfeited lease; failure to surrender; notice by landowner; form.**

If the lessee, his or her successors or assigns, shall fail or neglect to execute and record such surrender within the time provided for, then the owner of the land may serve upon the lessee, his or her successors or assigns, in person or by either registered or certified letter, at his or her last-known address, or by publication for one week in a newspaper of general circulation in the county where the land is situated, a notice in writing in substantially the following form:

To .....: I, the undersigned, owner of the following described land situated in ..... County, Nebraska, to wit: (description of land), upon which a lease, dated ..... day of ..... 20..., was given to ..... do hereby notify you that the terms of the lease have been broken by the owner thereof; that I hereby elect to declare and do declare the lease forfeited and void and that, unless you do, within ten days from this date, notify the register of deeds of such county as provided by law that the lease has not been forfeited, I will file with the register of deeds an affidavit of forfeiture as provided by law; and I hereby demand that you execute or have executed a proper surrender of the lease and that you cause the same to be recorded in the office of the register of deeds of such county, within ten days from this date. Dated this ..... day of ..... 20....

**Source:** Laws 1925, c. 133, § 1, p. 349; C.S.1929, § 57-201; R.S.1943, § 57-202; Laws 1955, c. 214, § 2, p. 600; Laws 1957, c. 242, § 46, p. 858; Laws 2004, LB 813, § 26.

**57-203 Forfeited lease; failure to surrender; publication of notice; landowner's affidavit; contents.**

The owner of the land may, after ten days from the date of service, registration, or publication of the notice, provided for by section 57-202, file with the register of deeds of the county where the land is situated an affidavit setting



forth (1) that the affiant is the owner of the land; (2) that the lessee, his successors or assigns, have failed and neglected to comply with the terms of the lease, reciting the facts constituting such failure; (3) that the same has been forfeited and is void; and (4) a copy of the notice served and the manner and time of the service thereof.

**Source:** Laws 1925, c. 133, § 1, p. 350; C.S.1929, § 57-201; R.S.1943, § 57-203; Laws 1955, c. 214, § 3, p. 601; Laws 1963, c. 324, § 1, p. 982.

**57-204 Lease; claim of nonforfeiture by lessee; notice to register of deeds; effect; effect of failure to give notice.**

(1) If the lessee, his successors or assigns, shall, within twenty days after the filing of the affidavit referred to in section 57-203, give notice in writing to the register of deeds of the county where the land is located that the lease has not been forfeited and that the lessee, his successors or assigns, still claim that the lease is in full force and effect, then such affidavit shall not be recorded but the register of deeds shall notify the owner of the land of the action of the lessee, his successors or assigns, and the owner of the land shall be entitled to the remedies now provided by law for the cancellation of such disputed lease.

(2) If the lessee, his successors or assigns, shall not notify the register of deeds, as provided in subsection (1) of this section, the register of deeds shall record the affidavit, referred to in section 57-203, and thereafter the record of the lease shall not be notice to the public of the existence of the lease or of any interest therein or rights thereunder, and the record shall not be received in evidence in any court of the state on behalf of the lessee, his successors or assigns, against the lessor, his successors or assigns.

**Source:** Laws 1925, c. 133, § 1, p. 350; C.S.1929, § 57-201; R.S.1943, § 57-204; Laws 1955, c. 214, § 4, p. 602.

Nature of the action is for cancellation of a disputed lease. Long v. Magnolia Petroleum Co., 166 Neb. 410, 89 N.W.2d 245 (1958).

**57-205 Forfeited lease; lessee's failure to execute surrender; remedy of lessor.**

Should the owner of such lease neglect or refuse to execute a surrender as provided in section 57-201, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such surrender, and he may also recover in such action of the lessee, his successors or assigns, the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and any additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases.

**Source:** Laws 1925, c. 133, § 2, p. 351; C.S.1929, § 57-202; R.S.1943, § 57-205.

Remedy providing for cancellation of lease is in equity. Long v. Magnolia Petroleum Co., 166 Neb. 410, 89 N.W.2d 245 (1958).

**57-206 Lease; discharge by entry on margin of record; procedure.**

Any oil and gas or mining lease that has been or may hereafter be recorded in the office of the register of deeds of any county may be discharged and canceled

of record by an entry on the margin of the record thereof signed by the lessee or his assigns of record, or his duly authorized attorney in fact or personal representative, or, if a corporation, by its duly authorized officers, surrendering all of his or its right, title and interest in and to such lease in the presence of the register of deeds or his deputy, who shall subscribe the same as witness.

**Source:** Laws 1925, c. 133, § 3, p. 351; C.S.1929, § 57-203; R.S.1943, § 57-206.

**57-207 Lease; discharge by endorsement on indenture; procedure.**

Any oil and gas or mining lease that has been or may hereafter be recorded in the office of the register of deeds of any county may be discharged and canceled by an endorsement made on the original lease signed by the lessee or his duly authorized attorney in fact, assignee of record or personal representative or, if a corporation, by its duly authorized officers, surrendering his or its right, title and interest in and to such lease, which endorsement may be entered on the margin of the record thereof, and shall have the same force and effect as the entry on the margin of the record as provided in section 57-206.

**Source:** Laws 1925, c. 133, § 4, p. 351; C.S.1929, § 57-204; R.S.1943, § 57-207.

**57-208 Lease; filing with register of deeds; effect; contingent extension provision; affidavit of happening of contingency; filing; effect.**

When an oil, gas or mineral lease is given on land situated within the State of Nebraska, the recording thereof in the office of the register of deeds of the county in which the land is located shall impart notice to the public of the validity and continuance of such lease for the definite term therein expressed, but no longer; *Provided*, that if such lease contains the statement of any contingency upon the happening of which the term of any such lease may be extended, such as and as much longer as oil and gas or either is produced in paying quantities, the owner of such lease may at any time before the expiration of the definite term of the lease file with the register of deeds an affidavit setting forth the description of the lease, that the affiant is the owner thereof and the facts showing that the required contingency has happened. This affidavit shall be recorded in full by the register of deeds, and such record together with that of the lease shall be due notice to the public of the existence and continuing validity of such lease, until the same shall be forfeited, canceled, set aside or surrendered according to law.

**Source:** Laws 1925, c. 133, § 5, p. 352; C.S.1929, § 57-205; R.S.1943, § 57-208.

Failure to file an affidavit of production, as required by this section, did not affect the contractual relations between the landowner and the plaintiffs. Section 57-208 is intended to give

notice to the public, including prospective purchasers. Superior Oil Co. v. Devon Corp., 604 F.2d 1063 (8th Cir. 1979).

**57-209 Lease; discharge of record; demand; requisite for action by landowner, when.**

At least twenty days before bringing the action provided for in section 57-205, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease, if such demand by ordinary diligence can be made in this state, that such lease be discharged of record. Such demand may be either written or oral. When written, a letterpress carbon or written copy

thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

**Source:** Laws 1925, c. 133, § 6, p. 352; C.S.1929, § 57-206; R.S.1943, § 57-209.

**57-210 Oil or gas lease; authority of executor, administrator, guardian, conservator, or trustee to execute; ratification of unauthorized or defective lease; how obtained.**

Proceedings may be had in the county court of the county in which an estate or trust is being administered or proceedings for guardianship or conservatorship are being had or in the county court of the county in which real estate is situated, for authority to lease any interest in real estate, or any part thereof, of any deceased person, beneficiary of a trust, minor, incompetent, or person unfit by reason of infirmities of age or physical disability or to ratify any prior unauthorized or defective lease executed by any executor, administrator, guardian, conservator, or trustee. If it shall appear to the court or judge thereof sitting in chambers within the district to be for the advantage of the estate of any decedent, beneficiary of a trust, minor, incompetent person, or person unfit by reason of infirmities of age or physical disability to make a lease, ratification agreement, or contract for the exploration and development or pooling or unitization of the real property of the estate or trust, or any part thereof, for oil, gas, or other hydrocarbons, the court or judge, as often as occasion therefor shall arise in the administration of any estate or trust, or in the course of any guardianship matter, or in the course of administration by a conservator, may on a petition, notice, and hearing, as provided in sections 57-211 and 57-212, authorize, empower, and direct the executor, administrator, trustee, conservator, or the guardian of such minor or incompetent person to lease such real estate or any part thereof or enter into pooling or unitization contracts.

**Source:** Laws 1939, c. 69, § 1, p. 281; C.S.Supp.,1941, § 57-210; R.S. 1943, § 57-210; Laws 1947, c. 199, § 1, p. 643; Laws 1951, c. 191, § 1, p. 701; Laws 1953, c. 190, § 1, p. 611; Laws 1955, c. 215, § 1, p. 603; Laws 1959, c. 259, § 1, p. 895; Laws 1967, c. 350, § 1, p. 928; Laws 1972, LB 1032, § 262.

**57-211 Lease; authority of executor, administrator, guardian, conservator, or trustee to execute; how obtained; petition; contents.**

The petition for such lease shall show (1) the advantage that may accrue to the estate or trust being administered or guardianship or conservatorship proceedings being had from making such proposed lease or entering into such pooling or unitization contract; (2) a general description of the property to be leased; (3) the term, rental, and general conditions of the proposed lease or pooling or unitization contract; and (4) the names of the (a) legatees and devisees, if any, or the heirs of the deceased, (b) beneficiaries of the trust, (c) minor, (d) incompetent person, or (e) a person unfit by reason of infirmities of age or physical disability, so far as known to the petitioner.

**Source:** Laws 1939, c. 69, § 2, p. 281; C.S.Supp.,1941, § 57-211; R.S. 1943, § 57-211; Laws 1951, c. 191, § 2, p. 701; Laws 1955, c. 215, § 2, p. 604; Laws 1967, c. 350, § 2, p. 929.

**57-212 Lease; authority of executor, administrator, guardian, conservator, or trustee to execute; notice; hearing; procedure; order.**

(1) Upon the filing of such petition, the court or judge thereof sitting in chambers within the district, if such court or judge deems the petition sufficient, shall set the matter down for hearing and direct to what persons and in what manner notice of such hearing shall be given.

(2) At the hearing provided for in subsection (1) of this section, any person interested in the estate, trust, conservatorship, or guardianship proceeding may appear and present objections to the proposed lease or pooling or unitization contract. If objections are filed to the petition, the court or judge thereof may adjourn the hearing to enable the parties to fully present their reasons and evidence for and against the proposed lease or pooling or unitization contract.

(3) If no objections are filed, as provided for in subsection (2) of this section, or if upon such hearing the objections are deemed insufficient, the court or judge thereof may make an order authorizing such lease or pooling or unitization contract upon such terms and for such consideration and period as is deemed proper by the court or judge thereof. Such lease or pooling or unitization contract may be for a term as long as ten years and as long thereafter as oil, gas, or other hydrocarbons shall be, or can be, produced in commercial quantities. The lease or pooling or unitization contract shall not be invalid or voidable because its term may or does extend beyond the term of office of the executor, administrator, trustee, conservator, or guardian making the same, beyond the time of final settlement of the estate or trust, beyond the minority of the minor, or beyond the time of infirmity and physical disability of the person having a conservator, or beyond the period of incompetency of any such incompetent.

**Source:** Laws 1939, c. 69, § 3, p. 282; C.S.Supp., 1941, § 57-212; R.S. 1943, § 57-212; Laws 1951, c. 191, § 3, p. 702; Laws 1953, c. 190, § 2, p. 612; Laws 1955, c. 215, § 3, p. 604; Laws 1967, c. 350, § 3, p. 929.

**57-212.01 Lease; authority of executor, administrator, guardian, or trustee to execute; petition; unknown owners, heirs, devisees, or legatees; procedure.**

Whenever it is set forth in the petition that there are unknown owners, or unknown heirs, devisees, or legatees of deceased owners, who claim or appear to have some interest in, rights or title to, or lien upon the real estate sought to be leased, the provisions of section 25-321 shall be followed before authority to execute a lease or pooling or unitization contract may be granted. To carry out the provisions of sections 57-210 to 57-212.01, the court may, upon the hearing of the petition, appoint a trustee to represent the interests of such unknown owners, or unknown heirs, devisees, or legatees and to carry out the orders of the court with respect thereto.

**Source:** Laws 1951, c. 191, § 4, p. 702; Laws 1955, c. 215, § 4, p. 605.

**57-213 Repealed. Laws 1951, c. 192, § 3.**

**57-214 Repealed. Laws 1959, c. 262, § 22.**

**57-215 Repealed. Laws 1959, c. 262, § 22.**

**57-216 Repealed. Laws 1959, c. 262, § 22.**

**57-217 Repealed. Laws 1959, c. 262, § 22.****57-218 Oil and gas leases; authority to issue.**

The governing board of all lands of the State of Nebraska, except the Board of Educational Lands and Funds, and the governing board of all cities, towns, counties, public power districts, school districts and all other governmental subdivisions of the State of Nebraska are respectively authorized and empowered to lease lands under their control for oil and gas exploration and development.

**Source:** Laws 1943, c. 163, § 1, p. 578; R.S.1943, § 57-218.

Cities may enter into oil and gas leases. *Belgum v. City of Kimball*, 163 Neb. 774, 81 N.W.2d 205 (1957).

**57-219 Oil and gas leases; annual delay rentals; royalties.**

Oil and gas leases, issued pursuant hereto, shall be for terms not to exceed ten years and as long thereafter as oil or gas is produced in paying quantities. Such leases shall provide for annual delay rentals of not less than twenty-five cents per acre and for a royalty of not less than twelve and one-half percent of all oil, gas, hydrocarbons and all other petroleum products produced and saved from the lands covered thereby and not used in the development and operation of the leased premises, or twelve and one-half percent of the market value thereof at the leased premises, free of cost to the lessor.

**Source:** Laws 1943, c. 163, § 2, p. 578; R.S.1943, § 57-219.

**57-220 Oil and gas leases; sale at public auction; notice.**

No such lease shall be sold except at public auction and after notice of the time and place of such sale, by publication two consecutive weeks in a legal newspaper published in the county where the land to be leased is situated and such other notice, if any, as the governing board may require. If no legal newspaper is published in the county where the land is situated said notice shall be published in a newspaper of general circulation therein. The purchaser of any such lease shall pay the cost of publishing the notice required hereunder.

**Source:** Laws 1943, c. 163, § 3, p. 578; R.S.1943, § 57-220.

**57-221 Oil and gas leases; pooling of acreage authorized; allocation of production.**

Such governing boards are respectively authorized in their discretion to enter into appropriate agreements for the purpose of unit or cooperative exploration, development, and operation of acreage, or any part of the acreage, covered by leases granted pursuant hereto with other acreage for the production of oil and gas. Such agreements shall provide for the allocation of production on a proportionate acreage or other agreed equitable basis.

**Source:** Laws 1943, c. 163, § 4, p. 579; R.S.1943, § 57-221; Laws 1961, c. 276, § 1, p. 810.

Cities may enter into agreements for pooling of acreage under oil and gas lease. *Belgum v. City of Kimball*, 163 Neb. 774, 81 N.W.2d 205 (1957).

**57-222 Oil and gas leases; life tenant; trustee for remaindermen; appointment.**

In any case where, by will, deed, or other instrument, title to real estate is in a tenant for life or other person having the right to the use thereof and income therefrom, with the remainder interest left to one or more contingent remaindermen, so that it is impossible to determine until the death of the life tenant or the future happening of some other determining event, who the contingent remaindermen will be or what interest, if any, the various contingent remaindermen will take, the county court of the county in which the real estate is located, upon the application of the life tenant, or any other person having a vested or contingent interest in the real estate, shall have jurisdiction and authority to appoint a trustee under proper bond, over the real estate, for the purpose of leasing the land or entering into pooling or unitization contracts for oil and gas developing purposes.

**Source:** Laws 1951, c. 187, § 1, p. 693; Laws 1955, c. 216, § 1, p. 606; Laws 1972, LB 1032, § 263.

**57-223 Oil and gas leases; trustee for remaindermen; execute when authorized by court; procedure.**

The trustee shall have the power and authority, subject to approval of the county court of the county where the land is located, to make valid oil and gas leases, pooling or unitization contracts, and other mining leases, upon the lands, for a term not to exceed ten years, and as long thereafter as oil, gas, or other minerals may be produced in paying quantities. The procedure to obtain such authority shall be substantially the same as the procedure provided under sections 57-211 and 57-212. The bonus and rentals therefrom shall be paid to the life tenant or other person entitled thereto.

**Source:** Laws 1951, c. 187, § 2, p. 694; Laws 1955, c. 216, § 2, p. 607; Laws 1959, c. 259, § 2, p. 896; Laws 1972, LB 1032, § 264.

**57-224 Oil and gas leases; trustee for remaindermen; invest income from royalties.**

Under proper court order, the trustee shall be authorized to invest income from royalties in like manner as funds of guardianships may be invested, which investments shall remain intact until the ultimate taker is determined and shall then be paid over to such ultimate taker and the trust closed. Income from investments shall be paid to the life tenant or other person entitled thereto.

**Source:** Laws 1951, c. 187, § 3, p. 694.

**57-225 Repealed. Laws 1959, c. 262, § 22.**

**57-226 Repealed. Laws 1959, c. 262, § 22.**

**57-227 Mineral and royalty interests; separate interests; effect of foreclosure of lien for taxes.**

No estate or interest in land or minerals, including royalty interest, shall be subject to foreclosure or otherwise affected by virtue of any lien for taxes against any other estate or interest in such land or minerals owned by another person, firm, or corporation.

**Source:** Laws 1957, c. 239, § 1, p. 800.

A mineral interest severed from the surface ownership remains real estate but may be listed on the tax rolls separate from the surface rights. If the owner of the surface rights so

requests, severed mineral interests must be separately listed on the tax rolls. *State ex rel. Svoboda v. Weiler*, 205 Neb. 799, 290 N.W.2d 456 (1980).

### **57-228 Mineral interest; severed; termination; suit in equity; defendants.**

Any owner or owners of the surface of real estate from which a mineral interest has been severed, on behalf of himself and any other owners of such interest in the surface, may sue in equity in the county where such real estate, or some part thereof, is located, praying for the termination and extinguishment of such severed mineral interest and cancellation of the same of record, naming as parties defendant therein all persons having or appearing to have any interest in such severed mineral interest, and if such parties defendant are not known and cannot be ascertained, they may be proceeded against as unknown defendants under the provisions of Chapter 25, article 3.

**Source:** Laws 1967, c. 348, § 1, p. 925.

Sections 57-228 to 57-231 which declared that mineral rights were abandoned unless the record owner had exercised ownership rights within twenty-three years immediately prior to the filing of an action to cancel the severed mineral interest, are unconstitutional insofar as the statutory provisions could be

interpreted to be retroactive in their operation. *Monahan Cattle Co. v. Goodwin*, 201 Neb. 845, 272 N.W.2d 774 (1978); *Wheeler & Manning 00 Ranches, Inc. v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

### **57-229 Mineral interests; severed; abandonment; extension; procedure.**

A severed mineral interest shall be abandoned unless the record owner of such mineral interest has within the twenty-three years immediately prior to the filing of the action provided for in sections 57-228 to 57-231, exercised publicly the right of ownership by (1) acquiring, selling, leasing, pooling, utilizing, mortgaging, encumbering, or transferring such interest or any part thereof by an instrument which is properly recorded in the county where the land from which such interest was severed is located; or (2) drilling or mining for, removing, producing, or withdrawing minerals from under the lands or using the geological formations, or spaces or cavities below the surface of the lands for any purpose consistent with the rights conveyed or reserved in the deed or other instrument which creates the severed mineral interest; or (3) recording a verified claim of interest in the county where the lands from which such interest is severed are located. Such a claim of interest shall describe the land and the nature of the interest claimed, shall properly identify the deed or other instrument under which the interest is claimed, shall give the name and address of the person or persons claiming the interest, and shall state that such person or persons claim the interest and do not intend to abandon the same. The interest of any such owner shall be extended for a period of twenty-three years from the date of any such acts; *Provided*, that the provisions of this section shall not apply to mineral interests of which the State of Nebraska or any of its political subdivisions is the record owner.

**Source:** Laws 1967, c. 348, § 2, p. 925.

In order for owners of severed mineral interests to publicly exercise their rights of ownership, they must strictly comply with the statutory requirements of this section prior to the date an action is filed by the surface owner. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

Reference to an unrecorded deed that may or may not exist does not establish the proper chain of ownership necessary to comply with the requirements for filing a verified claim. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

Severed mineral owners must strictly comply with the statutory requirements of this section. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

The "record owner" of mineral interests, as used in this section, includes an individual identified by probate records in the county where the interests are located. *Gibbs Cattle Co. v. Bixler*, 285 Neb. 952, 831 N.W.2d 696 (2013).

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

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

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

Sections 57-228 to 57-231 which declared that mineral rights were abandoned unless the record owner had exercised ownership rights within twenty-three years immediately prior to the filing of an action to cancel the severed mineral interest, are unconstitutional insofar as the statutory provisions could be interpreted to be retroactive in their operation. *Monahan Cattle Co. v. Goodwin*, 201 Neb. 845, 272 N.W.2d 774 (1978); *Whelock & Manning 00 Ranches, Inc. v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

### **57-230 Mineral interests; severed; abandoned; judgment.**

If the court shall find that the severed mineral interest has been abandoned, it shall enter judgment terminating and extinguishing it, canceling it of record, and vesting the title thereto in the owner or owners of the interest in the surface from which it was originally severed in the proportions in which they own such interest in the surface.

**Source:** Laws 1967, c. 348, § 3, p. 926.

Sections 57-228 to 57-231 which declared that mineral rights were abandoned unless the record owner had exercised ownership rights within twenty-three years immediately prior to the filing of an action to cancel the severed mineral interest, are unconstitutional insofar as the statutory provisions could be

interpreted to be retroactive in their operation. *Monahan Cattle Co. v. Goodwin*, 201 Neb. 845, 272 N.W.2d 774 (1978); *Whelock & Manning 00 Ranches, Inc. v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

### **57-231 Mineral interests; severed; limitation of action.**

In any action filed within two years after October 23, 1967, the owner of a severed mineral interest may enter his appearance and assert his interest therein, and he shall be deemed thereby to have timely and publicly exercised his right of ownership.

**Source:** Laws 1967, c. 348, § 4, p. 926.

Sections 57-228 to 57-231 which declared that mineral rights were abandoned unless the record owner had exercised ownership rights within twenty-three years immediately prior to the filing of an action to cancel the severed mineral interest, are unconstitutional insofar as the statutory provisions could be

interpreted to be retroactive in their operation. *Monahan Cattle Co. v. Goodwin*, 201 Neb. 845, 272 N.W.2d 774 (1978); *Whelock & Manning 00 Ranches, Inc. v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

### **57-232 Repealed. Laws 1971, LB 636, § 2.**

### **57-233 Repealed. Laws 1971, LB 636, § 2.**

### **57-234 Fractional interests in oil, gas, or hydrocarbon units or fields; taxation; violations; penalty.**

(1) When oil, gas, or other hydrocarbon wells or fields belonging to multiple owners are operated as a unit, the owner of each fractional interest in such unit shall be liable for the same proportion of the tax levied against the real property of the unit that his or her fractional interest therein bears to the total of interests in such unit and shall be liable for the tax levied against his or her taxable value in the tangible personal property of such unit.

(2) The unit operator shall collect from the owners of the fractional interests and remit to the county treasurer of the county in which the unit is located all taxes levied against the real or tangible personal property of the unit. The unit operator may deduct and withhold from royalty payments, or any other payments made to any fractional interest owner, either in kind or in money, the estimated amount of the tax to be paid by such fractional interest owner. Any difference between the estimated tax so withheld and the actual tax payable by any owner of a fractional interest may be accounted for by adjustments in



royalty or other payments made to such owner subsequent to the time the actual tax is determined.

(3) At the request of any unit operator who does not disburse payments to fractional interest owners, the first purchaser shall collect the tax from the fractional interest owners and transfer such proceeds to the unit operator who shall remit to the treasurer the taxes levied against the unit. Such first purchaser shall collect from the fractional interest owners under the same procedure outlined for the unit operator in this section.

(4) Failure of the unit operator to collect and remit the tax as provided in this section shall not preclude the county treasurer from utilizing lawful collection and enforcement remedies and procedures to collect the tax owed by the fractional interest owner, but a nonoperating owner shall not be subject to penalty or interest upon the tax owed unless he or she fails to remit such tax within twenty days after notification to him or her by the county treasurer of the default of the operator.

(5) For the purposes of this section, unit shall mean any single oil, gas, or other hydrocarbon well or field which has multiple ownership, or any combination of oil, gas, or other hydrocarbon wells, fields, and properties consolidated into a single operation, whether by a formal agreement or otherwise, and owner shall mean the holder of any interest or interests in any such property or unit including royalty interests.

(6) The county assessor shall assist the county treasurer in the preparation of a tax statement to the unit operator to aid in the collection of all property taxes assessed against the unit.

**Source:** Laws 1971, LB 636, § 1; Laws 1993, LB 345, § 3.

**57-235 Terms, defined.**

For purposes of sections 57-235 to 57-239, unless the context otherwise requires:

(1) Mineral interests shall mean mines, minerals, quarries, mineral springs and wells, oil and gas wells, and overriding royalty interests and production payments with respect to oil or gas leases; and

(2) Surface estate shall mean any real property, real estate, or lands including all city and village lots and all other lands except mineral interests.

**Source:** Laws 1981, LB 59, § 1.

**57-236 Mineral interests; severed; placed on tax list; application; contents.**

Any owner of the surface estate from which a mineral interest has been severed or the owner of the mineral interest which has been severed may file an application with the county assessor of the county where such surface estate is located to place such severed mineral interest on the tax list of the county. The applicant shall, at his or her own cost, provide to the county assessor proof of ownership of the severed mineral interest and a record of the creation of the severed mineral interest, as shown by the records of the county clerk or register of deeds. Proof of ownership, the name and last-known address of the owner or owners, the ownership interest, including any fractional interest, legal description, and the record of creation of the severed mineral interest shall be

provided in the form of an opinion by an attorney or a certificate prepared by a licensed abstracter.

**Source:** Laws 1981, LB 59, § 2.

**57-237 Mineral interest; separate listing; application; when.**

All applications requesting separate listing of a mineral interest and surface estate must be filed with the county assessor on or before January 1 of the year in which they are to be separately listed and assessed.

**Source:** Laws 1981, LB 59, § 3.

**57-238 Mineral interest; separate listing; appeal.**

Appeals from actions of the county assessor pursuant to sections 57-235 to 57-239 may be taken to the county board of equalization in the manner provided in Chapter 77, article 15.

**Source:** Laws 1981, LB 59, § 4.

**57-239 Tax Commissioner; rules and regulations; prescribe forms.**

The Tax Commissioner shall adopt and promulgate rules and regulations necessary for the implementation of sections 57-235 to 57-239. The Tax Commissioner shall also prescribe necessary forms for the implementation of sections 57-235 to 57-239.

**Source:** Laws 1981, LB 59, § 5; Laws 2000, LB 968, § 19; Laws 2007, LB334, § 8.

### ARTICLE 3

#### OIL FIELD EQUIPMENT LIEN

Section

57-301. Terms, defined.

57-302. Lien; scope.

57-303. Lien; filing; notice; requirements; effect.

57-304. Lien; enforcement by action; time.

**57-301 Terms, defined.**

As used in sections 57-301 to 57-304, unless the context otherwise requires:

(1) The term person includes one or more individuals, partnerships, limited liability companies, associations, corporations, legal representatives, trustees, and receivers in bankruptcy and reorganization of any group whether or not it is incorporated; and

(2) The term oil field equipment means oil field supplies, oil field machinery, materials, heavy machinery, buildings, tubing, tanks, boilers, engines, casing, wire lines, sucker rods, oil pipelines, gas pipelines, and all other material used in digging, drilling, torpedoing, operating, completing, maintaining, or repairing any such oil or gas wells or oil pipelines or gas pipelines, or in the construction or dismantling of refineries, casing-head gasoline plants, and carbon black plants.

**Source:** Laws 1951, c. 185, § 1, p. 689; Laws 1993, LB 121, § 348.

**57-302 Lien; scope.**

Any person who transports or hauls oil field equipment under express contract with the owner or operator of any gas or oil leasehold interest in real property, the owner or operator of any gas pipeline or oil pipeline, the owner of any oil field equipment and material, or the trustee, agent, or receiver of any such owner, shall have a lien upon the interest of such owner in the oil field equipment so transported and hauled. The lien shall include, in addition to the charge for hauling or transporting, labor performed, or materials used and expended in the transporting, erecting, dismantling, loading, and unloading of any oil field machinery, equipment, or supplies hauled or transported.

**Source:** Laws 1951, c. 185, § 2, p. 690.

**57-303 Lien; filing; notice; requirements; effect.**

Any person entitled to file a lien shall, within four months after the oil field equipment was transported and delivered, file a statement in the office of the county clerk of such county where such oil field equipment was delivered, and at the time of filing such statement the claimant shall serve a copy of the statement upon the owner thereof, or upon the trustee, agent, or receiver of any such owner by mailing a copy of such statement to the owner or to the trustee, agent, or receiver of such owner by either registered or certified mail to his or their last-known address. After the filing and service of such notice as heretofore provided, it shall be the duty of any such owner, trustee, agent, or receiver of any such owner to notify in writing any person who has a lien upon any such oil field equipment and materials before removing the same from the leasehold to which the lien claimant delivered the oil field equipment and materials. Such statement shall include the amount claimed and the items thereof described as definitely as practicable, the name of the owner, the name of the contractor, the name of the claimant, and a full description of the property subject to the lien, verified by affidavit. In the event such oil field equipment or any part thereof has been removed from the county in which it was originally delivered into another county within the state, any person entitled to file a lien as provided for in sections 57-301 to 57-304, may within thirty days after that person has received notice that such oil field equipment or any part thereof has been removed from the county in which it was originally delivered, file in the office of the county clerk of such county, a copy of the lien which has heretofore been filed in the county in which such property was originally transported and delivered. The lien provided for hereunder shall be junior to any valid and existing chattel mortgage of record.

**Source:** Laws 1951, c. 185, § 3, p. 690; Laws 1957, c. 242, § 47, p. 859; Laws 1959, c. 260, § 1, p. 897.

**57-304 Lien; enforcement by action; time.**

The holder of such lien shall within two years of the filing of such lien institute an action to foreclose and enforce the lien in the manner now provided by law for the foreclosure of a construction lien or institute an action in attachment or replevin, setting forth the lienholder's interest and right to possession thereto, in a court of competent jurisdiction in the county where such oil field equipment has been delivered, or in any county where it can be located.

**Source:** Laws 1951, c. 185, § 4, p. 691; Laws 1959, c. 260, § 2, p. 898.

## ARTICLE 4

## EASEMENTS FOR OIL AND GAS PIPELINES

## Cross References

**Interstate bridges**, regulation of pipelines upon and across, see section 39-8,119.

**Pipeline companies**, acquisition of easement or right-of-way on school lands, see section 72-222.01.

**Real estate mortgage**, gas and oil pipeline system, limitation of expiration of, see section 76-239.

## Section

- 57-401. Easement; authority of executor, administrator, guardian, trustee, or conservator to execute.
- 57-402. Easement; authority of executor, administrator, guardian, trustee, or conservator to execute; petition; notice; hearing; order.

**57-401 Easement; authority of executor, administrator, guardian, trustee, or conservator to execute.**

Administrators and executors of the estates of deceased persons, trustees of trust estates, conservators of estates of persons unfit by reason of infirmities of age or physical disability, and the guardians of estates of minors and incompetent persons are hereby authorized to enter into contracts with pipeline companies, corporations, individuals, partnerships, or limited liability companies for the construction, operation, and maintenance of pipelines for the transmission of oil or gas and to sell and dispose of an easement under the contract for such purposes, upon and across the lands, or any interest therein, belonging to the estates of deceased persons, beneficiaries of a trust, estates of persons unfit by reason of infirmities of age or physical disability, and estates of minors and incompetents, upon such terms and conditions that the administrators, executors, trustees, conservators, or guardians of such persons may deem reasonable and equitable, and for the best interest of the estates of deceased persons, minors, persons unfit by reason of infirmities of age or physical disability, and incompetents and the beneficiaries of a trust.

**Source:** Laws 1951, c. 186, § 1, p. 692; Laws 1955, c. 217, § 1, p. 608; Laws 1967, c. 350, § 4, p. 930; Laws 1993, LB 121, § 349.

**57-402 Easement; authority of executor, administrator, guardian, trustee, or conservator to execute; petition; notice; hearing; order.**

(1) Before entering into any such contracts for such easements, an application shall be duly filed in the county court of the county in which the estate, guardianship, or conservatorship proceedings are pending, or trust is being administered, or in the county court of the county where the real estate is located, duly sworn and signed by the executor, administrator, trustee, conservator, or guardian, as the case may be. The application shall set forth in detail the nature and character of the contract and conveyance of the easement upon and across the lands of the estates, the purposes for which the same are to be used and maintained, the terms and conditions thereof, the consideration therefor, and the reasons why the same is for the best interests of the estate. The court or any judge thereof in chambers shall set the application for hearing and direct to what persons and in what manner notice of such hearing shall be given.

(2) At the time and place set for the hearing, as is provided for by subsection (1) of this section, the court shall conduct a hearing upon the application and if, after due consideration thereof, the court finds that the granting of the ease-

ment for the erection and maintaining of the pipeline upon or across the land, will not result in a material injury to the property of the deceased person, beneficiary of the trust, minor, incompetent, or person unfit by reason of infirmities of age or physical disability, and further finds that the consideration therefor is adequate and proper, the court may approve the application and authorize and direct the executor, administrator, trustee, conservator, or guardian to enter into such contract and to execute such grants or conveyances to carry the same into effect, and authorize and direct the executor, administrator, trustee, conservator, or guardian to deliver the same to the persons, individuals, firms, or corporations with whom the same were authorized to be made.

**Source:** Laws 1951, c. 186, § 2, p. 692; Laws 1955, c. 218, § 1, p. 609; Laws 1967, c. 350, § 5, p. 930; Laws 1972, LB 1032, § 265.

## ARTICLE 5

### LIQUEFIED PETROLEUM GAS

#### Section

- 57-501. Terms, defined.
- 57-502. Cylinders; filling; requirements.
- 57-503. Cylinders; valves; requirements.
- 57-504. Container; filled by owner; purchase of cylinder; effect.
- 57-505. Container; filling by other than owner; unlawful.
- 57-506. Container; unlawful use; search warrant; violation; penalty.
- 57-507. Violations; penalty.
- 57-508. Sale of gas; units of measurement.
- 57-509. Sale by weight; marking required.
- 57-510. Weighing and measuring devices; testing; duties of Department of Agriculture.
- 57-511. Sale; invoices; information required.
- 57-512. Sale of gas; rules and regulations; tolerances.
- 57-513. Refilling of package or container; credit for unused liquid.
- 57-514. Vehicle tank; equipment.
- 57-515. Sale; correction for temperature; sale tickets; contents.
- 57-516. Unlawful sale; violation; penalties.
- 57-517. Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.

#### **57-501 Terms, defined.**

As used in sections 57-501 to 57-507, unless the context otherwise requires:

- (1) Person means and includes any person, firm, or corporation;
- (2) Owner means and includes (a) any person who holds a written bill of sale or other instrument under which title to the container was transferred to such person, (b) any person who holds a paid or receipted invoice showing purchase and payment of such container, (c) any person whose name, initials, mark, or other identifying device has been plainly and legibly stamped or otherwise shown upon the surface of such container for a period of not less than one year prior to the final enactment and approval of sections 57-501 to 57-507, or (d) any manufacturer of a container who has not sold or transferred ownership thereof by written bill of sale or otherwise;
- (3) Liquefied petroleum gas means and includes any material which is composed predominantly of hydrocarbons or mixtures of the same, such as propane, propylene, butanes (normal butane and isobutane), and butylenes;
- (4) Container means any vessel, including a cylinder or tank, used for storing of liquefied petroleum gas; and

(5) Cylinder means a container constructed in accordance with the United States Department of Transportation specifications in Title 49 of the Code of Federal Regulations as they existed on March 7, 2006.

**Source:** Laws 1951, c. 188, § 1, p. 695; Laws 2001, LB 137, § 1; Laws 2006, LB 1007, § 3.

**57-502 Cylinders; filling; requirements.**

No cylinder shall be filled or refilled with liquefied petroleum gas, or any other gas or compound, nor shall a cylinder be bought, sold, offered for sale, given, taken, loaned, delivered, or permitted to be delivered or otherwise used, or trafficked in, unless such cylinder meets the requirements of the regulations of the United States Department of Transportation as they exist on September 1, 2001.

**Source:** Laws 1951, c. 188, § 2, p. 696; Laws 2001, LB 137, § 2.

**57-503 Cylinders; valves; requirements.**

While in transit, in storage, and being moved into final utilization, all cylinders containing liquefied petroleum gas must have their valves protected as required by the regulations of the United States Department of Transportation on September 1, 2001.

**Source:** Laws 1951, c. 188, § 3, p. 696; Laws 2001, LB 137, § 3.

**57-504 Container; filled by owner; purchase of cylinder; effect.**

No person, except the owner thereof or persons authorized in writing by the owner so to do, shall fill or refill with liquefied petroleum gas, or any other gas or compound, a container or buy, sell, offer for sale, give, take, loan, deliver, or permit to be delivered, or otherwise use, dispose of, or traffic in a container if such container bears upon the surface thereof in plainly legible characters the name, initials, mark, or other device of the owner; nor shall any person, other than the owner of a container or a person authorized in writing by the owner, deface, erase, obliterate, cover up, or otherwise remove or conceal any such name, mark, initial, or device thereon. The person using any container may purchase the same at his or her option from the owner at a fair and reasonable market value, and after such purchase may purchase liquefied petroleum gas upon the open market.

**Source:** Laws 1951, c. 188, § 4, p. 696; Laws 2001, LB 137, § 4.

**57-505 Container; filling by other than owner; unlawful.**

The use of a container by any person other than the person whose name, mark, initial, or device is or has been upon such container, without written consent or purchase of such marked and distinguished container, for the sale of liquefied petroleum gas or filling or refilling with liquefied petroleum gas, or the possession of such container by any person other than the person having his or her name, mark, initial, or other device thereon, without the consent of such owner, is presumptive evidence of the unlawful use, filling or refilling, or trafficking in of such container.

**Source:** Laws 1951, c. 188, § 5, p. 697; Laws 2001, LB 137, § 5.

**57-506 Container; unlawful use; search warrant; violation; penalty.**

Whenever any person makes an oath in writing before any judge of the county court that the party making the affidavit has reason to believe and does believe that a container which is marked with the name, initials, mark, or other device of the owner is in the possession of or being used by or being filled or refilled by a person whose name, initials, mark, or other device does not appear on the container and who is in the possession of, filling or refilling, or using the container without the consent of the owner, the judge may, when satisfied that there is reasonable cause, issue a search warrant and cause the premises designated to be searched for the purpose of discovering and obtaining the container. The judge may also cause the person who possesses the container to be brought before the judge and inquire into the circumstances of such possession. If the judge finds that such person is guilty of a violation of sections 57-501 to 57-507, the judge shall sentence as provided in section 57-507 and shall also award the possession of the container, including the contents, taken upon such search warrant, to the owner thereof.

**Source:** Laws 1951, c. 188, § 6, p. 697; Laws 1986, LB 734, § 1; Laws 2001, LB 137, § 6.

**57-507 Violations; penalty.**

Any person who shall fail to comply with any of the provisions of sections 57-501 to 57-507 shall be deemed guilty of a Class III misdemeanor. Each violation of this section shall constitute a separate offense.

**Source:** Laws 1951, c. 188, § 7, p. 698; Laws 1977, LB 39, § 56.

**57-508 Sale of gas; units of measurement.**

It shall be unlawful to sell at retail or wholesale or offer for sale at retail or wholesale any liquefied petroleum gas except specified in pounds; liquid measure, specified in gallons; or vapor, specified in cubic feet or such other units as may be approved by the Department of Agriculture.

**Source:** Laws 1957, c. 240, § 1, p. 801.

**57-509 Sale by weight; marking required.**

When liquefied petroleum gas is sold at retail or wholesale or offered for sale at retail or wholesale by weight, in packages or containers, the tare weight of the container, and the net weight of the contents shall be plainly and conspicuously marked on the outside of the container or on a label firmly attached thereto. Tare weight shall not be construed to include the valve protecting cap, which shall be removed when weighing. It shall be a violation of sections 57-508 to 57-516 to sell or offer or expose for sale liquefied petroleum gas in packages or containers which do not bear a statement as to tare and net weight as required by this section, or which packages or containers bear a false statement as to weights.

**Source:** Laws 1957, c. 240, § 2, p. 801.

**57-510 Weighing and measuring devices; testing; duties of Department of Agriculture.**

The Department of Agriculture is authorized to test all weighing and measuring devices used in the retail or wholesale sale of liquefied petroleum gas, and shall condemn all such devices which are found (a) to be inaccurate and (b) do

not clearly indicate the quantity of liquefied petroleum gas in pounds, or gallons, or cubic feet or other unit approved by the department. It shall be unlawful to use a weighing or measuring device for determining quantities of liquefied petroleum gas which has been condemned by the department. The department shall conspicuously mark all condemned devices, which mark shall not be removed or defaced except upon authorization of the said department or authorized representatives. It shall be unlawful to use a vapor meter dial which is not equipped with a cubic foot indicator for testing the accuracy of the meter.

**Source:** Laws 1957, c. 240, § 3, p. 802.

**57-511 Sale; invoices; information required.**

An invoice shall be submitted to the purchaser showing the quantity of liquefied petroleum gas sold, expressed in pounds, or gallons, or cubic feet, or other unit approved by the Department of Agriculture. When vapor meters reading in approved units other than cubic feet are used, the invoice shall clearly indicate to the purchaser a factor to convert to gallons.

**Source:** Laws 1957, c. 240, § 4, p. 802.

**57-512 Sale of gas; rules and regulations; tolerances.**

The Department of Agriculture is authorized to promulgate and adopt such rules and regulations and establish tolerances within a maximum of two percent, plus or minus, which may be necessary for the enforcement of sections 57-508 to 57-516.

**Source:** Laws 1957, c. 240, § 5, p. 802.

**57-513 Refilling of package or container; credit for unused liquid.**

When liquefied petroleum gas is sold by the package or container, either by a refilling of a container or an exchange of containers, the vendor shall give the purchaser full credit for the unused liquid remaining in a container being exchanged or refilled.

**Source:** Laws 1957, c. 240, § 6, p. 802.

**57-514 Vehicle tank; equipment.**

Each vehicle tank, used in the retail or wholesale sale of liquefied petroleum gas, shall be equipped with a meter for measurement of liquefied petroleum gas in terms of gallons, and shall not be equipped with a bypass around the meter; *Provided*, that the prohibition of a bypass is not intended to prohibit the use of an equalization line.

**Source:** Laws 1957, c. 240, § 7, p. 802.

**57-515 Sale; correction for temperature; sale tickets; contents.**

Liquefied petroleum gas sold or delivered to a consumer and measured by the gallon as liquid shall be corrected for temperature in accordance with the volume correction factor table for liquefied petroleum gases, being schedule A of this section. All retail or wholesale sale tickets shall show the metered gallons and the temperature at the time of delivery and the corrected gallonage. This section shall not apply to unit sales or deliveries made direct to mobile fuel tanks, consisting of less than one hundred gallons. To convert from measured volume at another temperature to net volume at 60 degrees Fahrenheit:



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measure the volume and temperature. Determine the gravity at 60 degrees Fahrenheit. Refer to the column corresponding to this gravity and read the volume conversion factor opposite the observed temperature. Multiply the observed volume by this factor to obtain the volume at 60 degrees Fahrenheit.

Schedule A

VOLUME CORRECTION FACTOR TABLE  
Specific Gravity at 60 F/60 F

Degrees Fahr. 0.500	Pro- pane 0.5079	0.510	0.520	0.530	0.540	0.550	0.560	Iso- bu- tane 0.5631	0.570	0.580	N- Bu- tane 0.5844
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VOLUME CORRECTION FACTORS

-15	1.112	1.109	1.107	1.102	1.097	1.093	1.089	1.084	1.083	1.080	1.077	1.075
-10	1.105	1.102	1.100	1.095	1.091	1.087	1.083	1.079	1.078	1.075	1.072	1.071
-5	1.098	1.094	1.094	1.089	1.085	1.081	1.077	1.074	1.073	1.070	1.067	1.066
0	1.092	1.088	1.088	1.084	1.080	1.076	1.073	1.069	1.068	1.066	1.063	1.062
2	1.089	1.086	1.085	1.081	1.077	1.074	1.070	1.067	1.066	1.064	1.061	1.060
4	1.086	1.083	1.082	1.079	1.075	1.071	1.068	1.065	1.064	1.062	1.059	1.058
6	1.084	1.080	1.080	1.076	1.072	1.069	1.065	1.062	1.061	1.059	1.057	1.055
8	1.081	1.078	1.077	1.074	1.070	1.066	1.063	1.060	1.059	1.057	1.055	1.053
10	1.078	1.075	1.074	1.071	1.067	1.064	1.061	1.058	1.057	1.055	1.053	1.051
12	1.075	1.072	1.071	1.068	1.064	1.061	1.059	1.056	1.055	1.053	1.051	1.049
14	1.072	1.070	1.069	1.066	1.062	1.059	1.056	1.053	1.053	1.051	1.049	1.047
16	1.070	1.067	1.066	1.063	1.060	1.056	1.054	1.051	1.050	1.048	1.046	1.045
18	1.067	1.065	1.064	1.061	1.057	1.054	1.051	1.049	1.048	1.046	1.044	1.043
20	1.064	1.062	1.061	1.058	1.054	1.051	1.049	1.046	1.046	1.044	1.042	1.041
22	1.061	1.059	1.058	1.055	1.052	1.049	1.046	1.044	1.044	1.042	1.040	1.040
24	1.058	1.056	1.055	1.052	1.049	1.046	1.044	1.042	1.042	1.040	1.038	1.037
26	1.055	1.053	1.052	1.049	1.047	1.044	1.042	1.039	1.039	1.037	1.036	1.036
28	1.052	1.050	1.049	1.047	1.044	1.041	1.039	1.037	1.037	1.035	1.034	1.034
30	1.049	1.047	1.046	1.044	1.041	1.039	1.037	1.035	1.035	1.033	1.032	1.032
32	1.046	1.044	1.043	1.041	1.038	1.036	1.035	1.033	1.033	1.031	1.030	1.030
34	1.043	1.041	1.040	1.038	1.036	1.034	1.032	1.031	1.030	1.029	1.028	1.028
36	1.039	1.038	1.037	1.035	1.033	1.031	1.030	1.028	1.028	1.027	1.025	1.025
38	1.036	1.035	1.034	1.032	1.031	1.029	1.027	1.026	1.025	1.025	1.023	1.023
40	1.033	1.032	1.031	1.029	1.028	1.026	1.025	1.024	1.023	1.023	1.021	1.021
42	1.030	1.029	1.028	1.026	1.025	1.023	1.023	1.022	1.021	1.021	1.019	1.019
44	1.027	1.026	1.025	1.023	1.022	1.021	1.020	1.019	1.019	1.018	1.017	1.017
46	1.023	1.022	1.022	1.021	1.020	1.018	1.018	1.017	1.016	1.016	1.015	1.015
48	1.020	1.019	1.019	1.018	1.017	1.016	1.015	1.014	1.014	1.013	1.013	1.013
50	1.017	1.016	1.016	1.015	1.014	1.013	1.013	1.012	1.012	1.011	1.011	1.011
52	1.014	1.013	1.012	1.012	1.011	1.010	1.010	1.009	1.009	1.009	1.009	1.009
54	1.010	1.010	1.009	1.009	1.008	1.007	1.007	1.007	1.007	1.007	1.006	1.006
56	1.007	1.007	1.006	1.006	1.005	1.005	1.005	1.005	1.005	1.005	1.004	1.004
58	1.003	1.003	1.003	1.003	1.003	1.002	1.002	1.002	1.002	1.002	1.002	1.002
60	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
62	0.997	0.997	0.997	0.997	0.997	0.997	0.997	0.998	0.998	0.998	0.998	0.998
64	0.993	0.993	0.994	0.994	0.994	0.994	0.995	0.995	0.995	0.995	0.996	0.996
66	0.991	0.990	0.990	0.990	0.991	0.992	0.992	0.993	0.993	0.993	0.993	0.993
68	0.986	0.986	0.987	0.987	0.988	0.988	0.989	0.990	0.990	0.990	0.991	0.991
70	0.983	0.983	0.984	0.984	0.985	0.986	0.987	0.988	0.988	0.988	0.989	0.989
72	0.979	0.980	0.981	0.981	0.982	0.983	0.984	0.985	0.986	0.986	0.987	0.987
74	0.976	0.975	0.977	0.978	0.980	0.980	0.982	0.983	0.983	0.984	0.985	0.985
76	0.972	0.973	0.974	0.975	0.977	0.978	0.979	0.980	0.981	0.981	0.982	0.982
78	0.969	0.970	0.970	0.972	0.974	0.975	0.977	0.978	0.978	0.979	0.979	0.980
80	0.965	0.966	0.967	0.969	0.971	0.972	0.974	0.975	0.976	0.977	0.978	0.978
82	0.961	0.963	0.963	0.966	0.968	0.969	0.971	0.972	0.973	0.974	0.976	0.976
84	0.957	0.959	0.960	0.962	0.965	0.966	0.968	0.970	0.971	0.972	0.974	0.974
86	0.954	0.956	0.956	0.959	0.961	0.964	0.966	0.967	0.968	0.969	0.972	0.972
88	0.950	0.952	0.953	0.955	0.958	0.961	0.963	0.965	0.966	0.967	0.969	0.969
90	0.946	0.949	0.949	0.952	0.955	0.958	0.960	0.962	0.963	0.964	0.967	0.967
92	0.942	0.945	0.946	0.949	0.952	0.955	0.957	0.959	0.960	0.962	0.964	0.965
94	0.938	0.941	0.942	0.946	0.949	0.952	0.954	0.957	0.958	0.959	0.962	0.962
96	0.935	0.938	0.939	0.942	0.946	0.949	0.952	0.954	0.955	0.957	0.959	0.960
98	0.931	0.934	0.935	0.939	0.943	0.946	0.949	0.952	0.953	0.954	0.957	0.957
100	0.927	0.930	0.932	0.936	0.940	0.943	0.946	0.949	0.950	0.952	0.954	0.955
105	0.918	0.920	0.923	0.927	0.932	0.935	0.939	0.943	0.943	0.946	0.949	0.949
110	0.907	0.911	0.913	0.918	0.923	0.927	0.932	0.936	0.937	0.939	0.943	0.944
115	0.897	0.902	0.904	0.910	0.915	0.920	0.925	0.930	0.930	0.933	0.937	0.938
120	0.887	0.892	0.894	0.900	0.907	0.912	0.918	0.923	0.924	0.927	0.931	0.932

Source: Laws 1957, c. 240, § 8, p. 803.

**57-516 Unlawful sale; violation; penalties.**

Any person who violates any of the provisions of sections 57-508 to 57-516 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1957, c. 240, § 9, p. 807; Laws 1977, LB 39, § 57.

**57-517 Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.**

(1) The Legislature finds it is necessary that a leak check be performed following an interruption of service of a liquefied petroleum gas vapor service system to ensure safe and proper operation. Further, the Legislature finds that a leak check must be performed by a qualified service technician.

(2) It is the intent of the Legislature to create a mechanism that will educate users of liquefied petroleum gas of the requirements for a leak check when an interruption of service occurs.

(3) For purposes of this section:

(a) Interruption of service means the gas supply to a liquefied petroleum gas vapor service system is turned off;

(b) Leak check means an operation performed on a complete liquefied petroleum gas piping system and the connection equipment to verify that the liquefied petroleum gas vapor service system does not leak;

(c) Liquefied petroleum gas provider means any person or entity engaged in the business of supplying, handling, transporting, or selling at retail liquefied petroleum gas in this state; and

(d) Liquefied petroleum gas vapor service system means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch or less and includes, but is not limited to, the container assembly, pressure regulator or regulators, piping system, gas utilization equipment and components thereof, and venting system in residential, commercial, or institutional installations. Liquefied petroleum gas vapor service system does not include:

(i) Portable liquefied petroleum gas appliances and equipment of all types that are not connected to a fixed-fuel piping system;

(ii) Farm appliances and equipment in liquid service, including, but not limited to, brooders, dehydrators, dryers, and irrigation equipment;

(iii) Liquefied petroleum gas equipment for vaporization, gas mixing, and gas manufacturing;

(iv) Liquefied petroleum gas piping for buildings under construction or renovations that is not to become part of the permanent building piping system, such as temporary fixed piping for building heat; or

(v) Fuel gas system engines, including, but not limited to, tractors, mowers, trucks, and recreational vehicles.

(4) The liquefied petroleum gas provider shall affix a container warning label on each tank supplying liquefied petroleum gas to a liquefied petroleum gas vapor service system. The container warning label shall be affixed near the tank shutoff.

(5) The container warning label required by subsection (4) of this section shall include this warning:

**WARNING: Do Not Open Container Shutoff Valve!** If this valve is turned off for any reason, the National Fuel Gas Code (NFPA 54) requires a leak check of the system serviced by the container at the time the valve is turned back on. The leak check must be conducted by a qualified service technician. **Do Not Attempt To Open The Valve Yourself!** Failure to follow this warning may result in the ignition of leaking gas, causing serious and potentially fatal injury, fire, or explosion.

The container warning label shall include the statutory reference to this section.

(6) If the container warning label is affixed near the tank shutoff as required by subsection (4) of this section and the liquefied petroleum gas vapor service system is turned on prior to a leak check by a qualified service technician approved by the liquefied petroleum gas provider, the liquefied petroleum gas provider shall not be liable for any damage, injury, or death if the proximate cause of the damage, injury, or death was the negligence of a person or persons other than the liquefied petroleum gas provider.

**Source:** Laws 2007, LB274, § 1.

## ARTICLE 6

### UNDERGROUND STORAGE OF NATURAL GAS

#### Section

- 57-601. Terms, defined.
- 57-602. Public policy.
- 57-603. Eminent domain; rights of condemner.
- 57-604. Acquisition of property; petition of condemner; requirements.
- 57-605. Acquisition of property; conditions precedent; hearing; order; appeal.
- 57-606. Acquisition of property; without prejudice to drilling rights; protection of underground reservoir against pollution or escape of gas; payment by public utility owning right to storage; limitation on rights of condemnee.
- 57-607. Acquisition of property; eminent domain; procedure; payment of severance tax.
- 57-608. Reduction of gas to possession; property of condemner; exception.
- 57-609. Abandonment by condemner of underground reservoir; reversion of property to landowner.

#### **57-601 Terms, defined.**

As used in sections 57-601 to 57-607, unless the context otherwise requires:

- (1) Eminent domain statutes shall mean sections 76-701 to 76-724;
- (2) Underground reservoir shall mean any subsurface sand, stratum, or formation suitable for the injection and storage of natural gas or liquefied petroleum gas or both therein or which is capable of being made suitable for the storage of natural gas or liquefied petroleum gas, or both, by the construction of underground caverns by means of mining operations and the withdrawal of natural gas or liquefied gas therefrom;
- (3) Underground storage shall mean the right to inject and store natural gas or liquefied petroleum gas or both within and to withdraw natural gas or liquefied petroleum gas from an underground reservoir;
- (4) Natural gas shall mean gas which has been produced from the earth in its original state or such gas after the same has been processed or treated;
- (5) Native gas shall mean gas which has not been previously withdrawn from the earth;

(6) Liquefied petroleum gas shall mean hydrocarbons or mixtures thereof which have been extracted from natural gas or crude oil and which consist primarily of propane or butane or mixtures thereof;

(7) Condemner shall mean any person, partnership, limited liability company, corporation, association, or municipal corporation authorized to transport or distribute natural gas as a public utility within this state for ultimate public use or consumption;

(8) Condemnee, property, and county judge shall have the same meaning as in the eminent domain statutes;

(9) Public owner shall mean (a) the state, (b) any agency or political subdivision thereof, (c) any municipal corporation, (d) any quasi-municipal corporation, or (e) any public authority which has an interest in any of the lands in and under which a condemner requires the right to underground storage;

(10) Commercially recoverable native gas shall mean that native gas which would provide revenue in excess of direct operating expenses if produced;

(11) Reasonable notice shall mean notice served in the same manner as is provided in the code of civil procedure for the service of process in civil actions in the district courts of this state; and

(12) Interested parties shall mean the owners of any oil or gas leasehold, mineral, or royalty interest in the underground stratum or formation sought to be acquired and the owners of the surface rights to the underground stratum or formation.

**Source:** Laws 1953, c. 191, § 1, p. 613; Laws 1963, c. 325, § 1, p. 983; Laws 1993, LB 121, § 350.

#### **57-602 Public policy.**

Underground storage of natural gas or liquefied petroleum gas or both is found and declared to be in the public interest if it promotes the conservation of natural gas and permits the accumulation of natural gas reserves or liquefied petroleum gas reserves or both in an underground reservoir in order to make natural gas more readily available to the domestic, commercial, and industrial consumers of this state.

**Source:** Laws 1953, c. 191, § 2, p. 614; Laws 1963, c. 325, § 2, p. 985.

#### **57-603 Eminent domain; rights of condemner.**

Whenever any condemner shall require the right to underground storage in any of the lands within this state, such condemner may file an action to condemn and acquire such underground storage in and under the lands sought to be condemned, including the amount of commercially recoverable native gas, if any, remaining in the reservoir, together with such other rights or interests as may be necessary and proper to the full enjoyment thereof; *Provided*, that any right of underground storage obtainable hereunder shall be without prejudice to the rights of the owners of the surface of such land or other interests therein as to all other uses thereof.

**Source:** Laws 1953, c. 191, § 3(1), p. 614; Laws 1963, c. 325, § 3, p. 985.

#### **57-604 Acquisition of property; petition of condemner; requirements.**

The condemner shall set forth in the petition filed in the action to condemn and acquire the right to underground storage, referred to in section 57-603, whether any public owner has any interest which would be affected by underground storage in any of the lands in which such right to underground storage is required. Any such public owner having any such interest shall be served with notice of such petition in like manner as any condemnee, and such public owner shall, by instrument made by its proper officer or officers, grant such interest, but not more than the right to underground storage, to the condemner upon the payment to it by the condemner of compensation in such amount as shall have been fixed by the award in respect thereto, made in like manner as if such public owner were a condemnee.

**Source:** Laws 1953, c. 191, § 3(2), p. 614.

**57-605 Acquisition of property; conditions precedent; hearing; order; appeal.**

Any condemner desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas or liquefied petroleum gas or both shall, as a condition precedent to the filing of its petition, obtain from the Nebraska Oil and Gas Conservation Commission a certificate setting out findings of the commission (1) that the underground stratum or formation sought to be acquired is not capable of producing oil in paying quantities by any generally accepted method, (2) that the field, if then capable of producing commercially recoverable native gas, must have been producing natural gas for at least ten years, (3) that the condemner has acquired by purchase or other voluntary means at least sixty percent of the ownership which has the right to grant the use of the underground stratum or formation sought to be acquired, computed in relation to the surface area overlying that part of the stratum or formation expected to be penetrated by displaced or injected gas, and that the volume of native gas originally in place in the underground stratum or formation sought to be acquired is forty percent depleted, (4) that the underground stratum or formation sought to be acquired is suitable for the underground storage of natural gas or liquefied petroleum gas or both, (5) the amount of commercially recoverable native gas, if any, remaining therein, and (6) in the event any recoverable native gas is found to remain therein, that its use for such purposes is in the public interest because the stratum or formation has a greater value or utility as an underground reservoir for the storage of natural gas or liquefied petroleum gas or both than for the production of the remaining volumes of native gas. Such finding shall not of itself be a basis for compensation to be paid to the condemnee. If at the time of the condemner's filing with the commission native gas from the underground reservoir is being used for the secondary recovery of oil, then gas in necessary and required amounts shall be furnished to the operator or operators of the secondary recovery operations at equivalent costs, for so long as oil is produced in paying quantities in the secondary recovery operations, but the amount of gas to be furnished hereunder shall not exceed the quantity of recoverable native gas found to exist in the reservoir at the time of its acquisition hereunder if such operator was or operators were at such time entitled to the whole thereof, but if it was or they were at such time entitled to less than the whole thereof, then not to exceed the quantity thereof to which such operator was or operators were then entitled. The commission shall issue no such certificate until after public hearing is had on application and upon reasonable notice to interested parties. The applicant shall be assessed and pay all the costs of the proceedings incurred with the

commission. Any person having an interest in the property affected by a finding of the commission or the condemner may appeal the issuance or denial of certificate or from any finding as to the amount of commercially recoverable native gas, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1953, c. 191, § 3(3), p. 615; Laws 1963, c. 325, § 4, p. 985; Laws 1988, LB 352, § 100.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**57-606 Acquisition of property; without prejudice to drilling rights; protection of underground reservoir against pollution or escape of gas; payment by public utility owning right to storage; limitation on rights of condemnee.**

Any right of underground storage obtained hereunder, except in an underground storage reservoir which is a mined cavern constructed by mining operations, shall be without prejudice to the rights of any condemnee to explore for, drill for, produce, process, treat, or market any oil, gas, or other minerals which might be contained in such lands above or below the underground reservoir. Any additional cost and expense required to be incurred in order to protect the underground reservoir against pollution or escape of gas or liquefied petroleum gas therefrom by reason of boring or drilling above, into, or through such underground reservoir as provided for herein shall be paid by the public utility then owning the right to underground storage therein; *Provided*, no condemnee shall have the right to bore or drill into or through, or otherwise interfere with, an underground storage reservoir which is a mined cavern constructed by mining operations.

**Source:** Laws 1953, c. 191, § 3(4), p. 615; Laws 1963, c. 325, § 5, p. 987.

**57-607 Acquisition of property; eminent domain; procedure; payment of severance tax.**

Except as otherwise provided in sections 57-603 to 57-606, all proceedings in connection with the condemnation and acquisition of such underground storage and such other rights or interests as may be necessary and proper to the full enjoyment of such right shall be in accordance and compliance with sections 76-704 to 76-724, including full rights of appeal as to the amount of damages. The condemner shall pay the severance tax due on all commercially recoverable native gas being acquired for underground storage purposes whether such acquisition is made voluntarily or under the provisions of sections 57-601 to 57-609. The tax shall be based on the current value of the gas and shall be paid to the State Treasurer on the volume of commercially recoverable native gas remaining in place at the time of acquisition as found by the Nebraska Oil and Gas Conservation Commission pursuant to section 57-605. The State Treasurer shall place the tax received in the Severance Tax Fund.

**Source:** Laws 1953, c. 191, § 4, p. 616; Laws 1961, c. 370, § 3, p. 1145; Laws 1963, c. 325, § 6, p. 987.

**57-608 Reduction of gas to possession; property of condemner; exception.**

All natural gas or liquefied petroleum gas which has previously been reduced to possession, and which is subsequently injected into an underground storage

reservoir, shall at all times be deemed the property of the condemner, his heirs, successors or assigns; and in no event shall such natural gas or liquefied petroleum gas be subject to the right of the owner of the surface of said lands or of any mineral interest therein, under which said gas storage reservoir lies, or of any person other than the condemner, his heirs, successors and assigns, to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control thereover; *Provided*, that the condemner, his heirs, successors and assigns, shall have no right to natural gas or liquefied petroleum gas in any stratum, or portion thereof, which has not been condemned under the provisions of sections 57-601 to 57-609, or otherwise purchased.

**Source:** Laws 1963, c. 325, § 7, p. 988.

**57-609 Abandonment by condemner of underground reservoir; reversion of property to landowner.**

When the condemner shall have permanently abandoned the entire underground storage reservoir for storing natural gas or liquefied petroleum gas, title to that sand, formation, or stratum which had been appropriated under the terms of sections 57-601 to 57-609 shall revert to the then owners of the land, mineral and royalty interests in proportion to their several ownerships.

**Source:** Laws 1963, c. 325, § 8, p. 988.

**ARTICLE 7**

**OIL AND GAS SEVERANCE TAX**

Section

- 57-701. Terms, defined.
- 57-702. Tax; levy; persons liable; due and payable; lien.
- 57-703. Tax; levy on resources severed; rate.
- 57-704. Taxes; payment; time; statement; filing; form; contents.
- 57-705. Tax; remittance; Severance Tax Fund; Severance Tax Administration Fund; created; use.
- 57-706. Tax; security; notice; use.
- 57-707. Reports; payment of tax.
- 57-708. Tax; deductions permitted.
- 57-709. Tax; delinquent; action.
- 57-710. Tax; when delinquent; interest; penalty.
- 57-711. Repealed. Laws 1983, LB 228, § 12.
- 57-712. Tax Commissioner; supervise tax collections.
- 57-713. Repealed. Laws 1983, LB 228, § 12.
- 57-714. Tax; delinquent; restrain severing resource; Attorney General; county attorney.
- 57-715. Repealed. Laws 1973, LB 527, § 2.
- 57-716. Producer; file certificate; contents.
- 57-717. Severance tax collection; Tax Commissioner; powers and duties; penalty.
- 57-718. Tax Commissioner; enforcement; powers and duties; records; requirements.
- 57-719. Violations; penalties.

**57-701 Terms, defined.**

As used in Chapter 57, article 7, unless the context otherwise requires:

(1) Base production level shall mean a property's production for the preceding twelve months divided by the number of producing well production days. Enhanced recovery injection wells may be counted as producing wells to determine the base production level for a property;

(2) Oil shall mean any petroleum product or other oil taken from the earth;



(3) Severed shall mean the taking from the land by any means whatsoever of the natural resources enumerated in Chapter 57, article 7;

(4) Person shall mean any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, limited liability company, company, corporation, or person acting under a declaration of trust or as an operator under a lease agreement or unitization agreement;

(5) Property shall mean the right to produce crude oil or natural gas which arises from a lease, fee, or mineral interest. A property owner may treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil or natural gas if such reservoir is recognized by the Nebraska Oil and Gas Conservation Commission as a producing formation that is separate and distinct from and not in communication with any other producing formation;

(6) Producer shall mean the owner of a well or wells capable of producing oil or gas or both or any person who owns and operates a lease or a unit of producing leases in which other persons own interests, with respect to such well or wells;

(7) Stripper oil shall mean oil produced from a property where the base production level is ten or fewer barrels per day; and

(8) Nonstripper oil shall mean oil produced from a property where the base production level is more than ten barrels per day.

**Source:** Laws 1955, c. 219, § 1, p. 611; Laws 1967, c. 351, § 1, p. 932; Laws 1983, LB 228, § 1; Laws 1983, LB 224, § 1; Laws 1993, LB 121, § 351.

**57-702 Tax; levy; persons liable; due and payable; lien.**

(1) Commencing on January 1, 1956, and for each subsequent year, taxes are hereby levied on oil and natural gas severed from the soil of this state, except such oil or gas as is used only in severing operations or for repressuring or recycling purposes. Such taxes shall: (a) Be paid by (i) the first purchaser, if such oil or natural gas is sold in the state, or (ii) the person severing such oil or gas if such oil or natural gas is sold outside the state; and (b) become due and payable monthly, as provided by Chapter 57, article 7.

(2) The state shall have a prior and preferred lien, which shall arise when the tax levied in subsection (1) of this section is delinquent as provided in section 57-704, for the amount of the taxes, penalties, and interest imposed pursuant to Chapter 57, article 7, on:

(a) The oil or gas to which the tax applies that is possessed by the producer, first purchaser, or subsequent purchaser;

(b) The leasehold interest, oil or gas rights, the value of oil or gas rights, and other interests, including oil or gas produced and oil or gas runs owned by a person liable for the tax;

(c) Equipment, tools, tanks, and other implements used on the leasehold from which the oil or gas is produced; and

(d) Any other property not exempt from forced sale owned by the person liable for the tax.

As soon as possible after such lien arises, the Tax Commissioner shall cause such lien to be filed in the office of the appropriate filing officer.

**Source:** Laws 1955, c. 219, § 2, p. 611; Laws 1983, LB 228, § 2; Laws 1983, LB 224, § 2; Laws 1986, LB 1027, § 196.

**57-703 Tax; levy on resources severed; rate.**

The taxes levied by section 57-702 shall be levied upon the value of the resources severed, and shall be paid at the rate of three percent of the value of nonstripper oil and natural gas, except that oil produced from properties producing stripper oil shall be subject to a two percent severance tax. The value of oil and natural gas shall be computed immediately after such severance at the place where the same were severed.

**Source:** Laws 1955, c. 219, § 3, p. 611; Laws 1981, LB 257, § 1; Laws 1983, LB 228, § 3.

**57-704 Taxes; payment; time; statement; filing; form; contents.**

All taxes levied, as provided by sections 57-701 to 57-714, shall be due and payable in monthly installments on or before the last day of the month next succeeding the month in which the resources were severed. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the Tax Commissioner and postmarked before midnight of the final filing date. The person required to make payments pursuant to section 57-702 shall, on or before the last day of the month next succeeding the month in which the resources were severed, make out and file with the Tax Commissioner a report or return for the preceding month in such form as may be prescribed by the Tax Commissioner showing: The business conducted by the person engaged in the severing during the preceding month; the kind and gross quantity and value of the resources so severed; the location of the place or places where the same were severed; and such other information as the Tax Commissioner may require.

**Source:** Laws 1955, c. 219, § 4, p. 612; Laws 1967, c. 351, § 2, p. 932; Laws 1983, LB 224, § 3.

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

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

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

**Source:** Laws 1955, c. 219, § 5, p. 612; Laws 1959, c. 261, § 1, p. 899; Laws 1967, c. 351, § 3, p. 933; Laws 1981, LB 257, § 2; Laws 1982, LB 799, § 1; Laws 1983, LB 228, § 4; Laws 1983, LB 607, § 2; Laws 1985, LB 126, § 1; Laws 1986, LB 258, § 10; Laws 1989, LB 727, § 2; Laws 1993, LB 5, § 2; Laws 1993, LB 364, § 20; Laws 1993, LB 670, § 1; Laws 2000, LB 1369, § 1; Laws 2003, LB 790, § 58; Laws 2009, LB316, § 15; Laws 2009, First Spec. Sess., LB3, § 32; Laws 2019, LB302, § 60; Laws 2021, LB509, § 5.

Effective date August 28, 2021.

**57-706 Tax; security; notice; use.**

The Tax Commissioner, whenever he or she deems it necessary to insure compliance with the provisions of sections 57-701 to 57-719, may require any person subject to the tax to deposit with the Tax Commissioner suitable indemnity bond to insure payment of the taxes, levied under the provisions of sections 57-701 to 57-719, as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect any tax, interest, or penalty due. Notice of the use thereof shall be given to such person by mail.

**Source:** Laws 1955, c. 219, § 6, p. 612; Laws 1957, c. 242, § 48, p. 860; Laws 1967, c. 351, § 4, p. 934; Laws 2012, LB727, § 14.

**57-707 Reports; payment of tax.**

Except as otherwise provided in sections 57-701 to 57-714, the reports required under the provisions of sections 57-701 to 57-714 shall be made and the taxes paid by the person required to make payments pursuant to section 57-702.

**Source:** Laws 1955, c. 219, § 7, p. 613; Laws 1983, LB 224, § 4.

**57-708 Tax; deductions permitted.**

The person, remitting to the Tax Commissioner the taxes levied by the provisions of sections 57-701 to 57-714, shall deduct, from the amount due the persons owning an interest in the oil or gas or in the proceeds thereof at the time of severance, the proportionate amount of such taxes before making payment to such persons.

**Source:** Laws 1955, c. 219, § 8, p. 613; Laws 1967, c. 351, § 5, p. 934.

**57-709 Tax; delinquent; action.**

The Tax Commissioner may bring an action against any person engaged in the severing of the oil or natural gas, or when such resources are sold in the

state, against the first purchaser of the oil or natural gas, for the collection of taxes which are due and delinquent under the provisions of sections 57-701 to 57-714.

**Source:** Laws 1955, c. 219, § 9, p. 613; Laws 1967, c. 351, § 6, p. 934; Laws 1983, LB 224, § 5.

**57-710 Tax; when delinquent; interest; penalty.**

The tax provided by sections 57-701 to 57-714 shall become delinquent after the last day of each month as provided in section 57-704. Any such tax not paid within the time specified shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date of delinquency until paid, and such tax together with the interest shall be a lien as provided in section 57-702. The Tax Commissioner shall charge and collect a penalty for the delinquency in the amount of one percent of the delinquent taxes for each month, or part thereof, that the delinquency has continued, but in no event shall the penalty be more than twenty-five percent of the delinquent taxes. The Tax Commissioner may waive all or part of the penalty provided in this section but shall not waive the interest.

**Source:** Laws 1955, c. 219, § 10, p. 613; Laws 1967, c. 351, § 7, p. 934; Laws 1983, LB 224, § 6; Laws 1986, LB 1027, § 197; Laws 1992, Fourth Spec. Sess., LB 1, § 6.

**57-711 Repealed. Laws 1983, LB 228, § 12.**

**57-712 Tax Commissioner; supervise tax collections.**

It is hereby made the duty of the Tax Commissioner to supervise and enforce collections of all taxes that may be due under the provisions of sections 57-701 to 57-714.

**Source:** Laws 1955, c. 219, § 12, p. 613; Laws 1967, c. 351, § 8, p. 935.

**57-713 Repealed. Laws 1983, LB 228, § 12.**

**57-714 Tax; delinquent; restrain severing resource; Attorney General; county attorney.**

The Attorney General or the county attorney of the county wherein the natural resources are located may file a petition in the district court of such county, and upon such filing, such district court shall have the power to restrain by injunction any person from continuing to sever such oil products while delinquent in any report or the payment of any tax, penalty, or cost required under the provisions of sections 57-701 to 57-714.

**Source:** Laws 1955, c. 219, § 14, p. 614.

**57-715 Repealed. Laws 1973, LB 527, § 2.**

**57-716 Producer; file certificate; contents.**

The producer or a person designated by the producer shall, for each oil or natural gas producing property, file a certificate with the crude oil or natural gas purchaser and the Tax Commissioner which identifies the name and location of the oil or natural gas producing property, the property class, and the date upon which the property qualified for the class so certified. Such person

shall notify the crude oil or natural gas purchaser and the Tax Commissioner of any changes in the property's classification.

**Source:** Laws 1983, LB 228, § 6.

**57-717 Severance tax collection; Tax Commissioner; powers and duties; penalty.**

(1) The Tax Commissioner shall establish procedures to insure that all severance taxes which are due are paid in full and in a timely manner and shall undertake to insure that all oil and natural gas producing property classifications are current and correct.

(2) If the Tax Commissioner is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or which may come into his or her possession. One or more deficiency determinations of the amount due for one or more than one period may be made. To the amount of the deficiency determination for each period shall be added a penalty equal to ten percent thereof. In making a determination, the Tax Commissioner may offset overpayments for any period, together with interest on the overpayments, against underpayments for any period, against penalties, and against interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in this section.

(3) If any person fails to make a return the Tax Commissioner shall make an estimate of the amount of severance tax due. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Tax Commissioner's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten percent thereof. One or more determinations may be made for one or more than one period.

(4) The amount of the determination of any deficiency, exclusive of penalties, shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the last day of the month following the period for which the amount should have been returned until the date of payment.

(5) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade Chapter 57, article 7, or authorized rules and regulations, a penalty of twenty-five percent of the amount of the determination shall be added thereto.

(6) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

**Source:** Laws 1983, LB 228, § 7; Laws 1992, Fourth Spec. Sess., LB 1, § 7.

**57-718 Tax Commissioner; enforcement; powers and duties; records; requirements.**

(1) The Tax Commissioner shall enforce Chapter 57, article 7, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such article. The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of Chapter 57, article 7, and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such article.

(3) Every person subject to Chapter 57, article 7, shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may require. Every such person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person liable for the severance tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

**Source:** Laws 1983, LB 228, § 8.

#### **57-719 Violations; penalties.**

(1) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation of a false or fraudulent return, affidavit, claim, or document under or in connection with any matter arising under Chapter 57, article 7, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, be guilty of a Class IV felony.

(2) Any person who violates or aids or abets in the violation of Chapter 57, article 7, except as otherwise provided, shall be guilty of a Class IV misdemeanor. In the case of a continuing violation, every day of violation shall be considered a separate offense.

(3) Any corporate officer or employee with the duty to pay taxes imposed upon a corporation or to perform some other act required of a corporation shall be personally liable under section 77-1783.01 for the payment of such taxes or penalties in the event of willful failure on his or her part to perform such act.

**Source:** Laws 1983, LB 228, § 9; Laws 1996, LB 1041, § 1.

### **ARTICLE 8 OIL AND GAS LIENS**

#### Section

57-801. Terms, defined.

57-802. Leasehold interest; oil and gas operations; labor and material; lien.

- Section
- 57-803. Lien; property covered.
- 57-804. Subcontractor; lien.
- 57-805. Forfeiture of leasehold interest; effect; failure of equitable interest to ripen into legal title; effect.
- 57-806. Notice of lien; how given; effect.
- 57-807. Extent of liability of owner; payment after notice, effect; right of offset.
- 57-808. Lien; time of attaching.
- 57-809. Lien; labor preferred over material.
- 57-810. Labor and materials deemed furnished under single contract; lapse of time; effect.
- 57-811. Lien; filing; statement; contents.
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- 57-813. Filing of bond; procedure; effect.
- 57-814. Lien; enforcement by civil action; statute of limitations.
- 57-815. Actions; parties; defense; retention of funds.
- 57-816. Actions; consolidation; intervention.
- 57-817. Lien; removal of property; consent of holder of lien required.
- 57-818. Judgments; sale under execution.
- 57-819. Applicability of sections; liens granted prior to September 20, 1957; filing; enforcement; validity.
- 57-820. Act, how cited.

**57-801 Terms, defined.**

As used in sections 57-801 to 57-820, unless the context otherwise requires:

- (1) Person shall mean an individual, corporation, firm, partnership, limited liability company, or association;
- (2) Owner shall mean a person or persons holding any interest, legal or equitable, in a leasehold interest held for oil or gas purposes or any pipeline, or his or her agent, and shall include purchasers under executory contract, receivers, trustees, guardians, executors, and administrators;
- (3) Contract shall mean a contract, written or oral, express or implied, or partly express and partly implied, or executory or executed, or partly executory and partly executed;
- (4) Material shall mean material, water, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but does not include rigs or hoists or their integral component parts except wire lines;
- (5) Labor shall mean work performed in return for wages;
- (6) Services shall mean work performed exclusive of labor, including the hauling of material, whether or not involving the furnishing of materials;
- (7) Furnish shall mean sell or rent;
- (8) Drilling shall mean drilling, digging, torpedoing, acidizing, cementing, completing, or repairing;
- (9) Operating shall mean all operations in connection with or necessary to the production of oil or gas;
- (10) Construction or constructing shall mean construction, maintenance, fabrication, or repair;
- (11) Pipeline shall mean any pipeline laid and designed as a means of transporting natural gas, oil, or gasoline, or their components or derivatives, and the right-of-way therefor; and

(12) Original contractor shall mean any person for whose benefit a lien is prescribed by section 57-802.

**Source:** Laws 1957, c. 241, § 1, p. 807; Laws 1993, LB 121, § 352.

**57-802 Leasehold interest; oil and gas operations; labor and material; lien.**

Any person, who shall under contract with the owner of any leasehold interest held for oil or gas purposes or the owner of any pipeline perform any labor, furnish any material or services used or employed or furnished to be used or employed in the drilling or operating of any oil or gas well upon such leasehold interest or in the construction of any pipeline or in the constructing of any material so used, employed, or furnished to be used or employed, shall be entitled to a lien under sections 57-801 to 57-820. Any such person shall be entitled to such lien whether or not a producing well is obtained and whether or not such material is incorporated in or becomes a part of the completed oil well, gas well, or pipeline, for the amount due him for the performance of such labor or the furnishing of such material or services. This shall include, without limiting the generality of the foregoing, transportation and mileage charges connected therewith.

**Source:** Laws 1957, c. 241, § 2, p. 808.

Oil well lien was obtained under contract with owner of leasehold interest. *Western Pipe & Supply, Inc. v. Heart Mountain Oil Co., Inc.*, 179 Neb. 858, 140 N.W.2d 813 (1966).

**57-803 Lien; property covered.**

Liens created under the provisions of section 57-802 shall extend to:

(1) The leasehold interest held for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging;

(2) All materials and fixtures owned by the owner or owners of such leasehold interest and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon;

(3) All oil or gas wells located on such leasehold interest, and the oil or gas produced therefrom, and the proceeds thereof, exclusive of the interest therein owned by the owner of the underlying royalty or fee title; or

(4) The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging. This shall include, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and all materials and fixtures owned by the owner or owners of such pipeline and used or employed or furnished to be used or employed in the construction thereof.

**Source:** Laws 1957, c. 241, § 3, p. 809.

**57-804 Subcontractor; lien.**

Any person, who shall under contract perform any labor or furnish any material or services as a subcontractor under an original contractor or for or to an original contractor or a subcontractor under an original contractor, shall be entitled to a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor. The lien



provided for in this section shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to or for whom the labor is performed or material or services furnished and used or employed, or furnished to be used or employed in the drilling or operating of such oil or gas wells, or in the construction of such pipeline.

**Source:** Laws 1957, c. 241, § 4, p. 810.

**57-805 Forfeiture of leasehold interest; effect; failure of equitable interest to ripen into legal title; effect.**

If a lien provided for in sections 57-801 to 57-820 attaches to a leasehold interest, forfeiture of such leasehold interest shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which such lien has attached prior to forfeiture. If a lien provided for in sections 57-801 to 57-820 attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled, shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which such lien had attached prior to such failure.

**Source:** Laws 1957, c. 241, § 5, p. 810.

**57-806 Notice of lien; how given; effect.**

Anything in sections 57-801 to 57-820 to the contrary notwithstanding, any lien claimed by virtue of the provisions of sections 57-801 to 57-820 insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas until written notice of such claim has been delivered to such purchaser. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the leasehold interest upon which the lien is so claimed. Such notice shall be delivered personally to the purchaser or by registered or certified mail addressed to the purchaser. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the leasehold interest upon which the lien is claimed or the proceeds thereof except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until such delivery of notice in writing that the claim has been paid.

**Source:** Laws 1957, c. 241, § 6, p. 810.

**57-807 Extent of liability of owner; payment after notice, effect; right of offset.**

Nothing in sections 57-801 to 57-820 shall be deemed to fix a greater liability upon an owner in favor of any claimant under an original contractor than the amount for which the owner would be liable to the original contractor. The risk of all payments made to the original contractor shall be upon the owner after the receipt of notice that a lien is claimed and has been filed as herein provided by a person other than the original contractor. An owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

**Source:** Laws 1957, c. 241, § 7, p. 811.

**57-808 Lien; time of attaching.**

The lien provided for in sections 57-801 to 57-820 arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 57-811, such lien shall be preferred to all other titles, charges, liens, or encumbrances which may attach to or upon any of the property upon which a lien is given by the provisions of sections 57-801 to 57-820 subsequent to the date the lien herein provided for arises.

**Source:** Laws 1957, c. 241, § 8, p. 811.

**57-809 Lien; labor preferred over material.**

All liens affixed by virtue of the provisions of sections 57-801 to 57-820 upon the same property shall be of equal standing except that liens of persons for the performance of labor shall be preferred to all other liens affixed by virtue of sections 57-801 to 57-820.

**Source:** Laws 1957, c. 241, § 9, p. 811.

**57-810 Labor and materials deemed furnished under single contract; lapse of time; effect.**

All labor performed or materials or services furnished by any person entitled to a lien under the provisions of sections 57-801 to 57-820 upon the same leasehold interest for oil and gas purposes or the same pipeline shall for the purposes of sections 57-801 to 57-820 be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders. Not more than four months shall however elapse between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

**Source:** Laws 1957, c. 241, § 10, p. 811.

**57-811 Lien; filing; statement; contents.**

Every person, claiming a lien under the provisions of sections 57-801 to 57-820, shall file in the office of the county clerk for the county in which the land identified with the leasehold interest, or pipeline, or some part thereof, is situated, a statement verified by an affidavit. This statement shall set forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner or owners of the leasehold interest or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold interest or pipeline, and if the claimant be a claimant under the provisions of section 57-804, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. The statement of lien must be filed within four months after the date on which the claimant's labor was last performed or his material or services were last furnished under a single contract as provided for in section 57-810.

**Source:** Laws 1957, c. 241, § 11, p. 812.

The purpose of this section is to furnish interested parties with sufficient information to enable them to understand the nature of the lien claimed. *Western Pipe & Supply, Inc. v. Heart Mountain Oil Co., Inc.*, 179 Neb. 858, 140 N.W.2d 813 (1966).

**57-812 Filing of statement; duties of county clerk; effect of filing; fee.**

Immediately upon receipt of the statement of lien mentioned in section 57-811, the county clerk shall give such statement a file number and shall file the same and in addition shall enter a record of the same in a book kept by him or her for that purpose, to be called Oil and Gas Lien Record, which shall be ruled off into separate columns with headings as follows: File Number, When Filed, Name of Owner, Name of Claimant, Amount Claimed, Description of Land, and Remarks, and the county clerk shall make the proper entries under each column. The lien statement shall have the same force and effect as the timely filing of a construction lien with reference to real estate and secured transactions as provided in article 9, Uniform Commercial Code, insofar as personal property is concerned. The fee to be charged by the county clerk for the filing of such lien statement shall be two dollars.

**Source:** Laws 1957, c. 241, § 12, p. 812; Laws 1969, c. 461, § 2, p. 1611; Laws 1999, LB 550, § 39.

**57-813 Filing of bond; procedure; effect.**

(1) Whenever any lien or liens shall be fixed or attempted to be fixed under the provisions of sections 57-801 to 57-820 then the owner or owners of the property on which the lien or liens are claimed or the contractor or subcontractor through whom such lien or liens are claimed, or either of them, may file a bond with the county clerk of the county in which the property is located. Such bond shall describe the property on which the lien or liens are claimed, shall refer to the lien or liens claimed in manner sufficient to identify them and shall be in double the amount of the claimed lien or liens referred to and shall be payable to the party or parties claiming same. Such bond shall be executed by the party filing the same as principal and by a corporate surety authorized to execute such bonds as surety in the State of Nebraska. It shall be conditioned substantially that the principal and surety will pay to the obligees named or their assigns the amounts of the liens so claimed by them with all costs in the event same shall be proven to be liens on such property.

(2) Upon the filing of such bond, the county clerk shall send a notice thereof, to all obligees named therein, by registered or certified mail addressed to such obligees at the address set forth in their respective claims for lien.

(3) Such bond, when filed, and such notice, when mailed, shall be recorded by the county clerk in the Oil and Gas Lien Record, and any purchaser or lender may rely upon the record of such bond and notice in acquiring any interest in said property and shall be protected absolutely thereby.

(4) Such bond, when filed, shall take the place of the property against which any claim for lien referred to in such bond is asserted. At any time within the period of time provided in section 57-814, any person claiming such lien may sue upon such bond but no action shall be brought upon such bond after the expiration of such period. One action upon the bond shall not exhaust the remedies thereon but each obligee or assignee of an obligee named therein may maintain a separate suit thereon in any court having jurisdiction.

**Source:** Laws 1957, c. 241, § 13, p. 813.

**57-814 Lien; enforcement by civil action; statute of limitations.**

Any lien provided for by the provisions of sections 57-801 to 57-820 may be enforced by civil action in the district court of the county in which the land identified with such leasehold interest, or pipeline, or some part thereof, is situated. Such action shall be brought within two years from the time of the filing of the lien statement as provided for in section 57-811.

**Source:** Laws 1957, c. 241, § 14, p. 814.

**57-815 Actions; parties; defense; retention of funds.**

In such actions all persons whose liens are filed as herein provided and other encumbrancers may be made parties and the issues shall be made and the trials shall be conducted as in other civil cases. Where such action is brought by any person other than an original contractor, the original contractor through whom such person claims a lien shall be made a party defendant and shall at his own expense defend against the claim and if the contractor fails to make such defense, the owner may make the same at the expense of such original contractor. Until all claims, costs, and expenses are finally adjudicated and defeated or satisfied, the owner shall be entitled to retain from the original contractor the amount thereof.

**Source:** Laws 1957, c. 241, § 15, p. 814.

**57-816 Actions; consolidation; intervention.**

If several actions brought to enforce liens under the provisions of sections 57-801 to 57-820 on the same property be pending at the same time, the court may order them to be consolidated. Any claimant having filed his statement of lien as provided by the provisions of sections 57-801 to 57-820 shall be entitled to intervene in any pending action brought to enforce a lien on the same property.

**Source:** Laws 1957, c. 241, § 16, p. 814.

**57-817 Lien; removal of property; consent of holder of lien required.**

When any lien provided for by sections 57-801 to 57-820 shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property, or any part thereof, or cause the same to be removed from the premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien.

**Source:** Laws 1957, c. 241, § 17, p. 814.

**57-818 Judgments; sale under execution.**

In all cases where judgment may be rendered in favor of any person to enforce a lien under the provisions of sections 57-801 to 57-820, the leasehold interest, pipeline, or other property shall be ordered to be sold as in other cases of sales of real estate.

**Source:** Laws 1957, c. 241, § 18, p. 815.

**57-819 Applicability of sections; liens granted prior to September 20, 1957; filing; enforcement; validity.**

All liens granted by the provisions of sections 57-801 to 57-820 shall be perfected and enforced in accordance with the provisions of sections 57-801 to 57-820 whether such liens arise before or after September 20, 1957. Any

unperfected lien granted under any statute in effect prior to September 20, 1957, and which could be subsequently perfected in accordance with such prior statute were it not for the existence of sections 57-801 to 57-820 may be perfected and enforced in accordance with the provisions hereof if the statement of lien required to be filed under section 57-811 is filed within the time therein required or within two months after September 20, 1957, whichever period is longer. The validity of any lien perfected prior to September 20, 1957, in accordance with the requirements of any statute in effect prior to such date shall be determined on the basis of such prior statute but the enforcement thereof shall, insofar as possible, be governed by the provisions of sections 57-801 to 57-820.

**Source:** Laws 1957, c. 241, § 19, p. 815.

**57-820 Act, how cited.**

Sections 57-801 to 57-820 shall be known and may be cited as the Oil and Gas Lien Act.

**Source:** Laws 1957, c. 241, § 21, p. 815.

**ARTICLE 9**

**OIL AND GAS CONSERVATION**

Section	
57-901.	Development of oil and natural gas; purpose.
57-902.	Waste of oil and gas; prohibited.
57-903.	Oil and gas; terms, defined.
57-904.	Nebraska Oil and Gas Conservation Commission; members; qualifications; appointment; term; quorum; vacancy; compensation; expenses.
57-905.	Commission; powers and duties.
57-905.01.	Operator of Class II commercial underground injection well; duties.
57-906.	Oil and gas; drilling permit; abandonment permit; fee.
57-907.	Commission; limitation on production; duties.
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57-910.	Unit or cooperative development; plans and agreements; authorization; not violations of law; approval by commission; effect.
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57-910.06.	Unit or cooperative development; operations upon any portion of unit area; effect.
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57-910.11.	Unit or cooperative development; owner of land not subject to lease; obligation to pay share of costs of unit operation; effect.

§ 57-901

MINERALS, OIL, AND GAS

Section

- 57-910.12. Unit or cooperative development; certified order of commission; recording; effect as notice.
- 57-911. Commission; rules and regulations; filing fee.
- 57-912. Commission; witnesses; power of subpoena; failure to appear or testify; contempt.
- 57-913. Appeal; procedure.
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- 57-916. Violations; injunction; parties; process.
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- 57-917. Commission; director; appointment; compensation; bond or insurance.
- 57-918. Attorney General; act as legal advisor; administration of oath.
- 57-919. Oil and Gas Conservation Fund; investment; charges; exemptions; payment; report of producer; filing; interest; lien; penalties.
- 57-920. Sections; jurisdiction.
- 57-921. Commission; price or value of oil, gas, or other hydrocarbon substances; no power to fix.
- 57-922. Oil and Gas Conservation Trust Fund; receipts; disbursements; investment.
- 57-923. Well Plugging and Abandonment Trust Fund; created; use; investment; inactive oil or gas well; fee.

**57-901 Development of oil and natural gas; purpose.**

The purpose of sections 57-901 to 57-923 is to permit the development of Nebraska's oil and natural gas resources up to the maximum efficient rate of production while promoting the health, safety, and environment of the residents of Nebraska. It is the public policy of the state and in the public interest to encourage responsible development, production, and utilization of oil and gas natural resources and their products, to prevent waste, to protect the correlative rights of all owners, to encourage and authorize cycling, recycling, pressure maintenance, and secondary recovery operations to obtain the most efficient recovery of oil and gas resources for the highest benefit of landowners, royalty owners, producers, and the general public, and to facilitate open communication with and the participation of the general public and affected local governmental entities.

**Source:** Laws 1959, c. 262, § 1, p. 900; Laws 2016, LB1082, § 1.

This and succeeding sections contemplate determination of correlative rights of adjoining owners in a pool of oil or gas shall be determined on a fair, reasonable, and equitable basis. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

Lessee who refused to participate in a secondary recovery unit formed prior to compulsory unitization only entitled to recover for that which he would have produced by his own efforts without unitization. *Baumgartner v. Gulf Oil Co.*, 184 Neb. 384, 168 N.W.2d 510 (1969).

**57-902 Waste of oil and gas; prohibited.**

Waste of oil and gas, or either of them, as defined in section 57-903, is prohibited in the State of Nebraska.

**Source:** Laws 1959, c. 262, § 2, p. 901.

**57-903 Oil and gas; terms, defined.**

As used in sections 57-901 to 57-921, unless the context otherwise requires:

(1)(a) Waste, as applied to oil, shall include underground waste, inefficient, excessive, or improper use, or dissipation of reservoir energy, including gas energy and water drive, surface waste, open pit storage, and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but excluding storage, other than open

pit storage, reasonably necessary for building up or maintaining crude stocks and products thereof for consumption, use, and sale; (b) waste, as applied to gas shall include (i) the escape, blowing, or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas from wells producing oil or both oil and gas and (ii) the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced, but excluding gas that is reasonably necessary in the drilling, completing, testing, and producing of wells and gas unavoidably produced with oil if it is not economically feasible for the producer to save or use such gas; and (c) waste shall also mean the abuse of the correlative rights of any owner in a pool due to nonuniform, disproportionate, unratable, or excessive withdrawals of oil or gas therefrom causing reasonably avoidable drainage between tracts of land or resulting in one or more owners in such pool producing more than his or her just and equitable share of the oil or gas from such pool;

(2) Commission shall mean the Nebraska Oil and Gas Conservation Commission;

(3) Person shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and any department, agency, or instrumentality of the state or of any governmental subdivision thereof;

(4) Oil shall mean crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casing-head gas;

(5) Gas shall mean all natural gas and all other fluid hydrocarbons not defined as oil;

(6) Pool shall mean an underground reservoir containing a common accumulation of oil or gas or both, each zone of the structure which is completely separated from any other zone in the same structure is a pool as that term is used in sections 57-901 to 57-921;

(7) Field shall mean the general area overlaid by one or more pools;

(8) Owner shall mean the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he or she produces therefrom either for himself or herself or for himself or herself and others;

(9) Producer shall mean the owner of a well or wells capable of producing oil or gas or both or any person who owns and operates a lease, or a unit of producing leases in which other persons own interests, with respect to such well or wells;

(10) Correlative rights shall mean the opportunity afforded to the owner of each property in a pool to produce, so far as it is reasonably practicable to do so without waste, his or her just and equitable share of the oil or gas, or both, in the pool; and

(11) The word and shall include the word or, and the word or shall include the word and.

**Source:** Laws 1959, c. 262, § 3, p. 901; Laws 1983, LB 228, § 5; Laws 1983, LB 224, § 7; Laws 1993, LB 121, § 353; Laws 2016, LB1082, § 2.

The definition of waste embraces abuse of a correlative right resulting in an owner in the pool producing more than his just and equitable share of the oil therefrom. *Ohmart v. Dennis*, 188 Neb. 260, 196 N.W.2d 181 (1972).

One form of waste is abuse of correlative rights of any owner in a pool of oil or gas whereby another owner avoidably drains

more than a just and equitable share from the pool. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

Cited in discussion in recovery allowed lessee who refused to participate in a precompulsory unitization agreement. *Baumgartner v. Gulf Oil Co.*, 184 Neb. 384, 168 N.W.2d 510 (1969).

**57-904 Nebraska Oil and Gas Conservation Commission; members; qualifications; appointment; term; quorum; vacancy; compensation; expenses.**

There is hereby established the Nebraska Oil and Gas Conservation Commission. The commission shall consist of three members to be appointed by the Governor. The director of the state geological survey shall serve the commission in the capacity as its technical advisor, but with no power to vote. Any two commissioners shall constitute a quorum for all purposes. At least one member of the commission shall have had experience in the production of oil or gas and shall have resided in the State of Nebraska for at least one year. Each of the other members of the commission shall have resided in the State of Nebraska for at least three years. Initially, two of said members shall be appointed for a term of two years each; and one shall be appointed for a term of four years. At the expiration of the initial terms all members thereafter appointed shall serve for a term of four years. The Governor may at any time remove any appointed member of the commission for cause, and by appointment, with the approval of the Legislature, shall fill any vacancy on the commission.

The members of the commission shall receive as compensation for their services not more than four hundred dollars per day for each day actually devoted to the business of the commission, except that they shall not receive a sum in any one year in excess of four thousand dollars each. In addition, each member of the commission shall be reimbursed for expenses incurred in connection with the carrying out of his or her duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1959, c. 262, § 4, p. 902; Laws 1979, LB 90, § 1; Laws 1981, LB 204, § 99; Laws 2018, LB1008, § 2; Laws 2020, LB381, § 50.

**57-905 Commission; powers and duties.**

(1) The commission shall have jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of sections 57-901 to 57-921.

(2) The commission shall have authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission.

(3) The commission shall have authority to require: (a) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the production of oil and gas; (b) the making and filing of directional surveys, and reports on well location, drilling, and production within six months after the completion or abandonment of the well; (c) the drilling, casing, operating, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, the pollution of fresh water supplies by oil, gas, or salt water, and to prevent blowouts, cave-ins, seepages, and fires; (d) the furnishing of a reasonable bond with good and sufficient surety, conditioned for the performance of the duty to comply with all the provisions of the laws of the



State of Nebraska and the rules, regulations, and orders of the commission; (e) that the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured; (f) the operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios; (g) metering or other measuring of oil, gas, or product in pipelines or gathering systems; (h) that every person who produces or purchases oil or gas in this state shall keep and maintain or cause to be kept and maintained for a five-year period complete and accurate records of the quantities thereof, which records shall be available for examination by the commission or its agents at all reasonable times, and that every such person file with the commission such reports as it may reasonably prescribe with respect to such oil or gas or the products thereof; (i) that upon written request of any person, geologic information, well logs, drilling samples, and other proprietary information filed with the commission in compliance with sections 57-901 to 57-921, or any rule, regulation, or order of the commission, may be held confidential for a period of not more than twelve months; (j) periodic sampling and reporting of injection fluids injected into Class II commercial underground injection wells; (k) monitoring of produced water transporters; and (l) periodic evaluation of financial assurance requirements on existing and proposed wells to ensure ability to pay the costs of plugging, abandonment, and surface restoration.

(4) The commission is authorized to conduct public informational meetings and forums for public interaction on Class II commercial underground injection well permit applications under the jurisdiction of the commission.

(5) The commission shall have authority in order to prevent waste, to regulate: (a) The drilling, producing and plugging of wells, or test holes, and all other operations for the production of oil or gas; (b) the shooting and chemical treatment of wells; (c) the spacing of wells; (d) operations to increase ultimate recovery such as, but without limitation, the cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and (e) disposal of oilfield wastes, including salt water.

(6) The commission shall not have authority to limit the production of oil or gas, or both, from any pool or field except to prevent waste therein.

(7) The commission shall have authority to classify wells as oil or gas wells for purposes material to the interpretation or enforcement of the provisions of sections 57-901 to 57-921.

(8) The commission shall have authority to promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of sections 57-901 to 57-921.

(9) The commission, with the approval of the Governor, shall have authority to establish and maintain its principal office and its books, papers, and records at such place in the state as it shall determine. The commission shall not have authority to purchase its principal office quarters.

(10) The commission shall have authority to require that all wells drilled for oil and gas shall be adequately logged with mechanical-electrical logging devices, and to require the filing of logs.

(11) The commission shall have the authority to regulate the drilling and plugging of seismic and stratigraphic tests in oil and gas exploration holes.

(12) The commission shall have the authority to act as the state jurisdictional agency pursuant to the federal Natural Gas Policy Act of 1978, Public Law 95-621, 92 Stat. 3350.

(13) The commission shall have the authority to have one or more examiners, who are employees of the commission, conduct any of its hearings, investigations, and examinations authorized by sections 57-901 to 57-921. Such examiner may exercise the commission's powers including, but not limited to, the taking of evidence and testimony under oath, resolving questions of fact and questions of law, and the entering of an order. Such order shall be entered in the commission's order journal. Any person having an interest in property affected by an order issued by an examiner and who is dissatisfied with such order may appeal to the commission by filing a petition on appeal to the commission within fifteen days of the entering of the examiner's order. Such person shall provide notice to all interested persons by personal service or registered or certified United States mail with return receipt, requiring such parties to answer within fifteen days from the date of service. Upon appeal, the commission shall hear the case de novo on the record and shall not be bound by any conclusions of the examiner. The commission shall hold a hearing on the appeal within forty-five days of the filing of an appeal to the commission and issue its order within fifteen days after the hearing. The commission shall review all orders issued by an examiner that are not appealed and issue an order concerning the examiner's order within sixty days after the examiner's order. The commission shall adopt, amend, or reject the examiner's order. Any order of an examiner which is not appealed to the commission and which the commission adopts shall not be appealable to the district court unless the commission adopts an order before the end of the time for appeal to the commission.

(14) The commission shall require, upon receipt of a Class II commercial underground injection well permit application, that notice be provided to the county, city, or village and natural resources district within which the proposed well would be located and shall provide such county, city, or village and natural resources district with copies of all permit application materials.

**Source:** Laws 1959, c. 262, § 5, p. 903; Laws 1961, c. 277, § 1, p. 811; Laws 1961, c. 278, § 1, p. 813; Laws 1967, c. 352, § 1, p. 936; Laws 1971, LB 355, § 1; Laws 1978, LB 661, § 2; Laws 1979, LB 56, § 1; Laws 1980, LB 709, § 2; Laws 1983, LB 356, § 1; Laws 2016, LB1082, § 3.

Oil and Gas Conservation Commission has authority hereunder to prevent waste and to regulate the drilling, producing and spacing of wells. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-905.01 Operator of Class II commercial underground injection well; duties.**

An operator of a Class II commercial underground injection well shall sample and analyze the fluids injected into each disposal well at sufficiently frequent time intervals to yield data representative of fluid characteristics, but no less frequently than once annually. The operator shall submit a copy of the fluid analysis to the commission.

**Source:** Laws 2016, LB1082, § 4.

**57-906 Oil and gas; drilling permit; abandonment permit; fee.**

(1) It shall be unlawful to commence operations for the drilling of a well for oil or gas without first giving to the commission notice of intention to drill, and without first obtaining a permit from the commission, under such rules and regulations as may be reasonably prescribed by the commission, and by paying to the commission a fee of two hundred dollars for each such permit.

(2) It shall be unlawful to commence operations for the abandonment of a well with production casing in the hole without first giving to the commission notice of intention to abandon and without first obtaining the approval of the commission for such abandonment and paying to the commission a fee of one hundred dollars.

**Source:** Laws 1959, c. 262, § 6, p. 905; Laws 1967, c. 353, § 1, p. 938; Laws 1974, LB 804, § 1; Laws 1995, LB 407, § 1.

This section requires a permit from the Oil and Gas Conservation Commission before a well may be drilled. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-907 Commission; limitation on production; duties.**

(1) The commission shall limit the production of oil and gas from each pool to that amount which can be produced without waste in such pool.

(2) Whenever the commission limits the total amount of oil and gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction was imposed, the commission shall allocate or distribute the allowable production among the several wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonably avoidable drainage from each developed area not equalized by counterdrainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.

(3) The commission shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner as will protect the reasonable use of its energy for oil production.

(4) Each person now or hereafter purchasing or taking for transportation oil or gas from any owner or producer shall purchase or take ratably without discrimination in favor of any owner or producer in the same common source of supply offering to sell his oil or gas produced therefrom to such person or offering it to him for transportation.

**Source:** Laws 1959, c. 262, § 7, p. 905.

This section authorizes the Oil and Gas Conservation Commission to limit production to prevent waste and to allocate or distribute allowable production equitably. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-908 Commission; spacing units; establish.**

(1) When required to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission shall establish spacing units for a pool, except in those pools which, prior to September 28, 1959, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing state of development. Spacing units when established shall be of substantially uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the commission is authorized to divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.

(2) The size and the shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole, and that size shall be the area that can be efficiently and economically drained by one well.

(3) An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application of the person entitled to drill and after hearing, if the commission finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the commission is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; *Provided*, the commission shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.

(4) An order establishing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be changed or modified by the commission from time to time, when found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights.

**Source:** Laws 1959, c. 262, § 8, p. 906.

Pooling order herein was entered in conformity to requirements of act. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-909 Spacing unit; pooling of interests; order of commission; provisions for drilling and operation; costs; determination; recording.**

(1) When two or more separately owned tracts are embraced within a spacing unit or when there are separately owned interests in all or part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, or upon its own motion, may enter an order pooling all interests in the spacing unit for the development and operation thereof. Each such pooling order shall be made only after notice and hearing and shall be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his or her just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(2) Each such pooling order shall make provision for the drilling and operation of the authorized well on the spacing unit and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision. As to each owner who refuses to agree upon the terms for drilling and operating the well, the order shall provide for reimbursement for his or her share of the costs out of, and only out of, production from the unit representing his or her interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such cost, the

commission shall determine the proper cost. The order shall determine the interest of each owner in the unit and may provide in substance that, as to each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his or her share of the costs, such owner, unless he or she has agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the consenting owner; and as to each owner who does not agree, he or she shall be entitled to receive from the person or persons drilling and operating such well on the unit his or her share of the production applicable to his or her interest, after the person or persons drilling and operating such well have recovered, depending on the total measured depth of the well, three hundred percent for wells less than five thousand feet deep, four hundred percent for wells five thousand feet deep but less than six thousand five hundred feet deep, and five hundred percent for wells six thousand five hundred feet deep or deeper, of that portion of the costs and expenses of staking, well site preparation, drilling, reworking, deepening or plugging back, testing, completing, and other intangible expenses approved by the commission chargeable to each owner who does not agree, and, depending on the total measured depth of the well, two hundred percent for wells less than five thousand feet deep, three hundred percent for wells five thousand feet deep but less than six thousand five hundred feet deep, and five hundred percent for wells six thousand five hundred feet deep or deeper, of all equipment including wellhead connections, casing, tubing, packers, and other downhole equipment and surface equipment, including, but not limited to, stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation and a reasonable rate of interest on the unpaid balance. For the purpose of this section, the owner or owners of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths interest in and to such rights and a lessor to the extent of the remaining one-eighth interest therein.

(3) A certified copy of the order may be filed for record with the county clerk or register of deeds of the county, as the case may be, where the property involved is located, which recording shall constitute constructive notice thereof. The county clerk, or register of deeds, as the case may be, shall record the same in the real property records of the county and shall index the same against the property affected.

**Source:** Laws 1959, c. 262, § 9, p. 907; Laws 1978, LB 447, § 1; Laws 2011, LB458, § 1.

Waste occurs when an owner in a pool produces more than his just and equitable share of the oil therefrom. Ohmart v. Dennis, 188 Neb. 260, 196 N.W.2d 181 (1972).

Pooling order herein was entered in conformity to requirements of act. Farmers Irr. Dist. v. Schumacher, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-910 Unit or cooperative development; plans and agreements; authorization; not violations of law; approval by commission; effect.**

Plans and agreements for the unit or cooperative development and operation of a field or pool, or a part of either, including those in connection with the conduct of repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, water floods or any other method of operation, are authorized and may be performed, and shall not be held or construed to violate any of the statutes of this state relating to trusts,

monopolies, or contracts and combinations in restraint of trade, if the plans and agreements are in the public interest, protective of correlative rights, and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. If any such plan or agreement has been approved by the commission and an order authorizing unit operations has been entered by it pursuant to notice and hearing as provided in sections 57-910 to 57-910.12, it shall bind not only the persons who have executed such plan or agreement, but also all persons owning interests in oil and gas within the unit area.

**Source:** Laws 1959, c. 262, § 10, p. 908; Laws 1965, c. 343, § 1, p. 975.

**57-910.01 Unit or cooperative development; application for order for unit operation; contents.**

Any owner may file an application with the commission requesting an order for the unit operation of a pool, pools, or parts thereof and for the pooling of the interests in the oil and gas in the proposed unit area for the purpose of conducting such unit operation. The application shall contain:

(1) A description of the land and pool, pools, or parts thereof to be so operated, termed the unit area;

(2) The names of all persons owning or having an interest in the oil and gas in the proposed unit area or the production therefrom, including mortgagees and the owners of other liens or encumbrances, as disclosed by the public records in the county in which the unit area is situated and their addresses, if known. If the name or address of any person is unknown, the application shall so indicate;

(3) A statement of the type of the operations contemplated in order to effectuate the purposes of sections 57-910 to 57-910.12;

(4) A proposed plan of unitization applicable to the proposed unit area which the petitioner considers fair, reasonable, and equitable; and

(5) A proposed operating plan covering the manner in which the unit will be supervised and managed and costs allocated and paid, unless all owners within the unit area have already executed an operating agreement covering such supervision, management, and allocation and payment of costs.

**Source:** Laws 1965, c. 343, § 2, p. 976.

**57-910.02 Unit or cooperative development; hearing; notice.**

Upon filing of an application for an order providing for the unit operation of a pool, pools, or part thereof, and for the pooling of the interests in the oil and gas in the proposed unit area, the commission shall promptly set the matter for hearing and in addition to the notice otherwise required by section 57-911 or the commission rules shall cause notice of the hearing to be given by certified mail at least fifteen days prior to the date of hearing to all persons whose names are required to be set forth in such application.

**Source:** Laws 1965, c. 343, § 3, p. 976; Laws 1967, c. 354, § 1, p. 939.

**57-910.03 Unit or cooperative development; findings required; entry of order; written consents required; revocation of order.**

If after considering the application and hearing the evidence offered in connection therewith the commission finds that:

- (1) The material averments of the application are true;
- (2) Such unit operation is feasible, will prevent waste, and can reasonably be expected to increase substantially the ultimate recovery of oil or gas, or both;
- (3) The value of the estimated additional recovery of oil or gas will exceed the estimated additional costs incident to conducting unit operations;
- (4) The oil and gas allocated to each separately owned tract within the unit area under the proposed plan of unitization represents, so far as can be practicably determined, each such tract's just and equitable share of the oil and gas, or both, in the unit area; and
- (5) In case there are owners who have not executed an operating agreement or agreed to the proposed operating plan, that such proposed operating plan:
  - (a) Makes a fair and equitable adjustment among the owners within the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment which are contributed to the unit operation;
  - (b) Provides for a fair and equitable determination of the cost of unit operations, including capital investment, and establishes a fair and equitable method for allocating such costs to the separately owned tracts and for payment of such costs by the owners of such tracts, either directly or out of such owner's respective shares of unit production;
  - (c) Establishes, if necessary, a fair and equitable method for carrying or otherwise financing any owner who elects to be carried, or otherwise financed, allowing a reasonable interest charge for such service payable out of such owner's share of the unit production; and
  - (d) Provides that each owner shall have a vote in the supervision and conduct of unit operations corresponding to the percentage of the costs of unit operations chargeable against the interest of such owner; then the commission shall enter an order setting forth such findings and approving the proposed plan of unitization and proposed operating plan, if any. No order shall be entered by the commission authorizing the commencement of unit operations unless and until there has been written consent to the proposed plan of unitization by those persons who own at least seventy-five percent of the unit production or proceeds thereof and to the proposed operating plan, if any, by those persons who will be required to pay at least sixty-five percent of the costs of the unit operation. If such consent has not been obtained at the time the order of approval is made, the commission shall, upon application, hold such supplemental hearings and make such findings as may be required to determine if there has been such consent so that a supplemental order authorizing the commencement of unit operations can be entered. Notice of any such supplemental hearing shall be given, by mail to each person who has previously entered his or her appearance, at least ten days prior to such supplemental hearing. If the required percentages of consent have not been obtained within a period of six months from the date on which the order of approval is made, such order shall be ineffective and shall be revoked by the commission unless, for good cause shown, the commission extends that time.

**Source:** Laws 1965, c. 343, § 4, p. 977; Laws 1967, c. 355, § 1, p. 942; Laws 1984, LB 1032, § 1.

The possible advantage in delay to nonpooling owners by allowance of a cost item for risk capital. *Ohmart v. Dennis*, 188 Neb. 260, 196 N.W.2d 181 (1972).  
being carried or otherwise financed may be lessened or offset by

**57-910.04 Repealed. Laws 1984, LB 1032, § 2.****57-910.05 Unit or cooperative development; order for unit operation; allocation of unit production.**

Upon application by an owner the commission, by order, may, in the same manner and subject to the same conditions as in an original order, provide for the unit operation of a pool or pools, or parts thereof, that embrace a unit area established by a previous order of the commission. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

**Source:** Laws 1965, c. 343, § 6, p. 979.

**57-910.06 Unit or cooperative development; operations upon any portion of unit area; effect.**

All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portion of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the commission providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the orders of the commission.

**Source:** Laws 1965, c. 343, § 7, p. 979.

**57-910.07 Unit or cooperative development; unit production; allocation; property of several owners.**

The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

**Source:** Laws 1965, c. 343, § 8, p. 980.

**57-910.08 Unit or cooperative development; division orders; no termination by commission.**

No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by any commission order, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

**Source:** Laws 1965, c. 343, § 9, p. 980.

**57-910.09 Unit or cooperative development; commission order not to result in transfer of title.**



Except to the extent that the parties affected so agree, no commission order shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area.

**Source:** Laws 1965, c. 343, § 10, p. 980.

**57-910.10 Unit or cooperative development; lien of operator; establishment and enforcement; effect on nonconsenting owner.**

Subject to the limitations set forth in sections 57-910 to 57-910.12, and to such further limitations as may be set forth in the plan of unitization and operating plan, the operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization and operating plan upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of the cost of developing and operating the unit area. The lien may be established and enforced in the same manner as is provided by sections 57-801 to 57-820. For such purposes any nonconsenting owner shall be deemed to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area.

**Source:** Laws 1965, c. 343, § 11, p. 980.

The possible advantage in delay to nonpooling owners by allowance of a cost item for risk capital. Ohmart v. Dennis, 188 Neb. 260, 196 N.W.2d 181 (1972).  
being carried or otherwise financed may be lessened or offset by

**57-910.11 Unit or cooperative development; owner of land not subject to lease; obligation to pay share of costs of unit operation; effect.**

Notwithstanding any provisions in sections 57-910 to 57-910.12 to the contrary, any person who owns an oil or gas interest within the unit area in a tract which is not subject to an oil and gas lease or similar contract shall be deemed, for purposes of this section, an owner obligated to pay costs of unit operations to the extent of seven-eighths of such interest and shall be deemed a royalty owner to the extent of one-eighth of such interest free from such costs.

**Source:** Laws 1965, c. 343, § 12, p. 980.

**57-910.12 Unit or cooperative development; certified order of commission; recording; effect as notice.**

A certified copy of any order of the commission entered under any provisions of sections 57-910 to 57-910.12 shall be entitled to be recorded in the office of the register of deeds for the counties where all or any portion of the unit area is located, and such recordation shall constitute notice thereof to all persons.

**Source:** Laws 1965, c. 343, § 13, p. 981.

**57-911 Commission; rules and regulations; filing fee.**

(1) The commission shall prescribe rules and regulations governing the practice and procedure before the commission.

(2) No rule, regulation, or order, or amendment thereof, except in an emergency, shall be made by the commission without a public hearing upon at least fifteen days' notice. The public hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the commission is authorized to issue an emergency order without notice or hearing which shall be effective upon promulgation. No emergency order shall remain effective for more than twenty days.

(4) Any notice required by the provisions of sections 57-901 to 57-921, except in proceedings involving a direct complaint by the commission, shall be given at the election of the commission either by personal service, registered or certified mail, or one publication in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice shall be issued in the name of the state, shall be signed by a member of the commission or its secretary, and shall specify the style and number of the proceedings, the time and place of the hearing, and the purpose of the proceeding. Should the commission notice be by personal service, such service may be made by any officer authorized to serve summons, or by any agent of the commission, in the same manner and extent as is provided by law for the service of summons in civil actions in the district courts of this state. Proof of the service by such agent shall be by his or her affidavit and proof of service by an officer shall be in the form required by law with respect to service of process in civil actions. In all cases where a complaint is made by the commission or the Director of the Nebraska Oil and Gas Conservation Commission that any part of any provision of sections 57-901 to 57-921, or any rule, regulation, or order of the commission is being violated, notice of the hearing to be held on such complaint shall be served on the interested parties in the same manner as is provided in the code of civil procedure for the service of process in civil actions in the district courts of this state. In addition to notices required by this section, the commission may provide for further notice of hearing in such proceedings as it may deem necessary in order to notify all interested persons of the pendency of such proceedings and the time and place of hearing and to afford such persons an opportunity to appear and be heard.

(5) All rules, regulations, and orders issued by the commission shall be in writing, shall be entered in full and indexed in books to be kept by the commission for that purpose, shall be public records open for inspection at all times during reasonable office hours, and shall be filed as provided by the Administrative Procedure Act. A copy of any rule, regulation, or order certified by any member of the commission, or its secretary, under its seal, shall be received in evidence in all courts of this state with the same effect as the original.

(6) The commission may act upon its own motion or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, the commission shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The commission shall enter its order within thirty days after the hearing.

(7) A petition filed with the commission for a public hearing shall be accompanied by a filing fee of two hundred fifty dollars.

**Source:** Laws 1959, c. 262, § 11, p. 908; Laws 1961, c. 279, § 1, p. 816; Laws 1967, c. 354, § 2, p. 939; Laws 1967, c. 356, § 1, p. 944; Laws 1995, LB 407, § 2; Laws 2016, LB1082, § 5.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

The requirement that the commission enter its order within thirty days after hearing is directory, not mandatory. *Ohmart v. Dennis*, 188 Neb. 260, 196 N.W.2d 181 (1972).

Rule 13(b) adopted hereunder establishes regulations for all wells drilled to sources of supply at estimated depth exceeding

two thousand five hundred feet where no spacing pattern has been established by existing wells. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-912 Commission; witnesses; power of subpoena; failure to appear or testify; contempt.**

(1) The commission shall have the power to summon witnesses, to administer oaths and to require the production of records, books and documents for examination at any hearing or investigation conducted by it. Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence, and no decision shall be rendered, sanction imposed or rule or order issued except on consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with a preponderance of the reliable probative and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of facts. No person shall be excused from attending and testifying, or from producing books, papers and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; *Provided*, that nothing in this subsection shall be construed as requiring any person to produce any books, papers or records or to testify in response to any inquiry not pertinent to some question lawfully before such commission or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to its subpoena; *Provided*, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(2) In case of failure or refusal on the part of any person to comply with the subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter regarding which he may be lawfully interrogated, any district court in the state, upon the application of the commission, may in term time or vacation issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

**Source:** Laws 1959, c. 262, § 12, p. 910.

**57-913 Appeal; procedure.**

Any person having an interest in property affected by and who is dissatisfied with any rule, regulation, or order made or issued under sections 57-901 to

57-921 may appeal the rule, regulation, or order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1959, c. 262, § 13, p. 911; Laws 1961, c. 280, § 1, p. 818; Laws 1967, c. 357, § 1, p. 946; Laws 1988, LB 352, § 101; Laws 2016, LB1082, § 6.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**57-914 Temporary restraining order; bond; limitation of actions.**

(1) No temporary restraining order or injunction of any kind against the commission or its agents, employees or representatives, or the Attorney General, shall become operative unless and until the plaintiff party shall execute and file with the clerk of the district court a bond in such amount and upon such conditions as the court issuing such order or injunction may direct, with surety approved by the clerk of the district court thereof. The bond shall be made payable to the State of Nebraska, and shall be for the use and benefit of all persons who may be and to the extent that they shall suffer injury or damage by any acts done under the protection of the restraining order or injunction, if the same should not have issued. No suit on the bond may be brought after six months from the date of the final determination of the suit in which the restraining order or injunction was issued.

(2) Any suit, action, or other proceedings based upon a violation of any of the provisions of sections 57-901 to 57-921 shall be commenced within one year from the date of the violation complained of.

**Source:** Laws 1959, c. 262, § 14, p. 912; Laws 2016, LB1082, § 7.

**57-915 Violations; penalty.**

(1) Any person who violates any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission shall be guilty of a Class II misdemeanor. Each day that such violation continues shall constitute a separate offense.

(2) If any person, for the purpose of evading the provisions of sections 57-901 to 57-921, or any rule, regulation or order of the commission, shall make or cause to be made any false entry or statement in a report required by the provisions of sections 57-901 to 57-921, or by any such rule, regulation or order, or shall make or cause to be made any false entry in any record, account or memorandum required by the provisions of sections 57-901 to 57-921, or by any such rule, regulation or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum, such person shall be guilty of a Class II misdemeanor.

(3) Any person knowingly aiding or abetting any other person in the violation of any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission shall be subject to the same penalty as that prescribed by the provisions of sections 57-901 to 57-921 for the violation by such other person.

(4) The penalties provided in this section shall be recoverable by suit filed by the Attorney General in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of any such penalty

shall not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

**Source:** Laws 1959, c. 262, § 15, p. 913; Laws 1977, LB 39, § 59; Laws 2016, LB1082, § 8.

**57-916 Violations; injunction; parties; process.**

(1) Whenever it appears that any person is violating or threatening to violate any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission, the commission shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. Upon the filing of any such suit, summons issued to such person may be directed to the sheriff of any county in this state for service by such sheriff or his deputies. In any such suit, the court shall have jurisdiction and authority to issue, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant.

(2) If the commission shall fail to bring suit to enjoin a violation or threatened violation of any provision of sections 57-901 to 57-921, or any rule, regulation, or order of the commission, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in his own behalf to restrain such violation or threatened violation in any court in which the commission might have brought suit. The commission shall be made a party defendant in such suit in addition to the person violating or threatening to violate a provision of sections 57-901 to 57-921, or a rule, regulation or order of the commission, and the action shall proceed and injunctive relief may be granted in the same manner as if suit had been brought by the commission; Provided, that in such event the person bringing suit shall be required to give bond in accordance with the rules of civil procedure in the district courts.

**Source:** Laws 1959, c. 262, § 16, p. 914; Laws 2016, LB1082, § 9.

**57-916.01 Violations; civil penalty; procedure.**

(1) In addition to the penalties prescribed in section 57-915, any person who violates any provision of sections 57-901 to 57-921, any rule, regulation, or order of the commission, or any term, condition, or limitation of any permit issued pursuant to such sections, rule, regulation, or order may be subject to a civil penalty imposed by the commission of not to exceed one thousand dollars. No civil penalty shall be imposed until written notice is sent pursuant to subsection (2) of this section and a period of ten days has elapsed in which the person may come into compliance if possible. If any violation is a continuing one, each day a violation continues after such ten-day period shall constitute a separate violation for the purpose of computing the applicable civil penalty. The commission may compromise, mitigate, or remit such penalties.

(2) Whenever the commission intends to impose a civil penalty under this section, the commission shall notify the person in writing (a) setting forth the date, facts, and nature of each violation with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or permit involved in the violation, and (c) specifying the amount of each penalty which the commission intends to impose. Such written notice shall be sent by registered or certified mail to the last-known

address of such person. The notice shall also advise such person of his or her right to a hearing and that failure to pay any civil penalty subsequently imposed by the commission will result in a civil action by the commission to collect such penalty. The person so notified may, within thirty days of receipt of such notice, submit a written request for a hearing to review any penalty to be imposed by the commission. A hearing shall be held in accordance with the Administrative Procedure Act, and any person upon whom a civil penalty is subsequently imposed may appeal such penalty pursuant to such act. On the request of the commission, the Attorney General or county attorney may institute a civil action to collect a penalty imposed pursuant to this section.

**Source:** Laws 1990, LB 922, § 1; Laws 2016, LB1082, § 10.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**57-917 Commission; director; appointment; compensation; bond or insurance.**

To enable the commission to carry out its duties and powers under the laws of this state with respect to conservation of oil and gas and to enforce sections 57-901 to 57-921 and the rules and regulations so prescribed, the commission shall employ one chief administrator who shall not be a member of the commission and who shall be known as the Director of the Nebraska Oil and Gas Conservation Commission, and as such he or she shall be charged with the duty of administering and enforcing the provisions of sections 57-901 to 57-921 and all rules, regulations, and orders promulgated by the commission, subject to the direction of the commission. The director shall be a qualified petroleum engineer with not less than three years' actual field experience in the drilling and operation of oil and gas wells. Such director shall hold office at the pleasure of the commission and receive a salary to be fixed by the commission. The director, with the concurrence of the commission, shall have the authority, and it shall be his or her duty, to employ assistants and other employees necessary to carry out the provisions of sections 57-901 to 57-921. The director shall be ex officio secretary of the Nebraska Oil and Gas Conservation Commission and shall keep all minutes and records of the commission. The director shall, as secretary, be bonded or insured as required by section 11-201. The premium shall be paid by the State of Nebraska. The director and other employees of the commission performing duties authorized by sections 57-901 to 57-921 shall be paid their necessary traveling and living expenses when traveling on official business at such rates and within such limits as may be fixed by the commission, subject to existing laws.

**Source:** Laws 1959, c. 262, § 17, p. 914; Laws 1978, LB 653, § 19; Laws 2004, LB 884, § 31; Laws 2016, LB1082, § 11.

**57-918 Attorney General; act as legal advisor; administration of oath.**

The Attorney General shall be the attorney for the Nebraska Oil and Gas Conservation Commission; Provided, that in cases of emergency or in other special cases the commission may, with the consent of the Attorney General retain additional legal counsel, and for such purpose may use any funds available under the provisions of sections 57-901 to 57-921. Any member of the commission, or the secretary thereof, shall have the power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by

sections 57-901 to 57-921 or by any other law of this state relating to the conservation of oil and gas.

**Source:** Laws 1959, c. 262, § 18, p. 915; Laws 2016, LB1082, § 12.

**57-919 Oil and Gas Conservation Fund; investment; charges; exemptions; payment; report of producer; filing; interest; lien; penalties.**

(1) All money collected by the Tax Commissioner or the commission or as civil penalties under sections 57-901 to 57-921 shall be remitted to the State Treasurer for credit to a special fund to be known as the Oil and Gas Conservation Fund. Expenses incident to the administration of such sections shall be paid out of the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Oil and Gas Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) There is hereby levied and assessed on the value at the well of all oil and gas produced, saved, and sold or transported from the premises in Nebraska where produced a charge not to exceed fifteen mills on the dollar. The commission shall by order fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as in its judgment the expenses chargeable against the Oil and Gas Conservation Fund may require, except that the amounts fixed by the commission shall not exceed the limit prescribed in this section. It shall be the duty of the Tax Commissioner to make collection of such assessments. The persons owning an interest, a working interest, a royalty interest, payments out of production, or any other interest in the oil and gas, or in the proceeds thereof, subject to the charge provided for in this section shall be liable to the producer for such charge in proportion to their ownership at the time of production. The producer shall, on or before the last day of the month next succeeding the month in which the charge was assessed, file a report or return in such form as prescribed by the commission and Tax Commissioner together with all charges due. In the event of a sale of oil or gas within this state, the first purchaser shall file this report or return together with any charges then due. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports or returns shall be considered filed on time if postmarked before midnight of the final filing date. Any such charge not paid within the time herein specified shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date of delinquency until paid, and such charge together with the interest shall be a lien as provided in section 57-702. The Tax Commissioner shall charge and collect a penalty for the delinquency in the amount of one percent of the charge for each month or part of the month that the charge has remained delinquent, but in no event shall the penalty be more than twenty-five percent of the charge. The Tax Commissioner may waive all or part of the penalty provided in this section but shall not waive the interest. The person remitting the charge as provided in this section is hereby authorized, empowered, and required to deduct from any amounts due the persons owning an interest in the oil and gas or in the proceeds thereof at the time of production the proportionate amount of such charge before making payment to such persons. This subsection shall apply to all lands in the State of Nebraska, anything in section 57-920 to the contrary notwithstanding, except that there shall be exempted from the charge

levied and assessed in this section the following: (a) The interest of the United States of America and the interest of the State of Nebraska and the political subdivisions thereof in any oil or gas or in the proceeds thereof; (b) the interest of any Indian or Indian tribe in any oil or gas or in the proceeds thereof produced from land subject to the supervision of the United States; and (c) oil and gas used in producing operations or for repressuring or recycling purposes. All money so collected shall be remitted to the State Treasurer for credit to the Oil and Gas Conservation Fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of sections 57-901 to 57-921.

**Source:** Laws 1959, c. 262, § 19, p. 915; Laws 1969, c. 584, § 56, p. 2380; Laws 1973, LB 527, § 1; Laws 1974, LB 804, § 2; Laws 1980, LB 709, § 3; Laws 1981, LB 167, § 33; Laws 1983, LB 224, § 8; Laws 1986, LB 1027, § 198; Laws 1992, Fourth Spec. Sess., LB 1, § 8; Laws 1994, LB 1066, § 44; Laws 1995, LB 407, § 3; Laws 1997, LB 97, § 1; Laws 2009, First Spec. Sess., LB3, § 33; Laws 2016, LB1082, § 13.

#### Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

#### **57-920 Sections; jurisdiction.**

The State of Nebraska being a sovereign state and not disposed to jeopardize or surrender any of its sovereign rights, sections 57-901 to 57-921 shall apply to all lands in the State of Nebraska lawfully subject to its police powers, except it shall apply to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands shall fail to effect the intent and purposes of sections 57-901 to 57-921 and otherwise shall apply to such lands to such extent as an officer of the United States having jurisdiction, or his or her duly authorized representative, shall approve any of the provisions of sections 57-901 to 57-921 or the order or orders of the commission which affects such lands, and the same shall apply to any lands committed to a unit agreement approved by the Secretary of the Interior of the United States, or his or her duly authorized representative, except that the commission may, under such unit agreements, suspend the application of the provisions of sections 57-901 to 57-921 or any part of sections 57-901 to 57-921 so long as the conservation of oil and gas and the prevention of waste, as provided in sections 57-901 to 57-921, is accomplished thereby but such suspension shall not relieve any operator from making such reports as are necessary or advised to be fully informed as to operations under such agreement and as the commission may require under the provisions of sections 57-901 to 57-921.

**Source:** Laws 1959, c. 262, § 20, p. 917; Laws 2016, LB1082, § 14.

The commission is authorized to suspend the operation of the conservation act in certain situations subject to the requirement that conservation and prevention of waste be accomplished. *Ohmart v. Dennis*, 188 Neb. 260, 196 N.W.2d 181 (1972).

#### **57-921 Commission; price or value of oil, gas, or other hydrocarbon substances; no power to fix.**

Notwithstanding anything heretofore contained in sections 57-901 to 57-921, the Nebraska Oil and Gas Conservation Commission shall have no authority to



establish, fix or in any way control the price or value of oil, gas, other hydrocarbon substances or any of the products or component parts thereof.

**Source:** Laws 1959, c. 262, § 21, p. 917; Laws 2016, LB1082, § 15.

**57-922 Oil and Gas Conservation Trust Fund; receipts; disbursements; investment.**

There is hereby created in the state treasury a special fund to be known as the Oil and Gas Conservation Trust Fund. All sums of money received by the Nebraska Oil and Gas Conservation Commission, in a manner other than as provided in sections 57-901 to 57-921, shall be paid into the state treasury and the State Treasurer shall deposit the money in the Oil and Gas Conservation Trust Fund. The State Treasurer shall disburse the money in the trust fund as directed by resolution of the Nebraska Oil and Gas Conservation Commission. All disbursements for the fund shall be made upon warrants drawn by the Director of Administrative Services. 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 1973, LB 119, § 1; Laws 2016, LB1082, § 16.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**57-923 Well Plugging and Abandonment Trust Fund; created; use; investment; inactive oil or gas well; fee.**

The Well Plugging and Abandonment Trust Fund is created. The Nebraska Oil and Gas Conservation Commission shall adopt and promulgate rules and regulations that provide for the collection of a fee for each inactive oil or gas well administered by the commission. The fee shall not exceed two hundred dollars per well per year and shall not be imposed unless an oil or gas well has been inactive for two years or longer. The commission shall remit such fees to the State Treasurer for credit to the fund. The fund shall be used by the commission for the purpose of plugging and abandoning oil or gas wells and completing the required surface restoration if the bonded operator is unable to fulfill such operator's financial obligation. 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 1999, LB 293, § 1.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 10**

**PROCESS ON OIL AND GAS EXPLORERS**

**Section**

57-1001. Service of process.

57-1002. Repealed. Laws 1983, LB 447, § 104.

**57-1001 Service of process.**

The performance of any service in connection with exploring for oil and gas, drilling wells therefor, regardless of whether such wells be dry, development of

oil and gas interests, and operating and servicing oil and gas properties by (1) a nonresident of the State of Nebraska or (2) an agent or employer of any such persons, shall constitute sufficient contact with this state for exercise of personal jurisdiction over such person in any action arising out of the activities within the State of Nebraska.

**Source:** Laws 1961, c. 281, § 1, p. 819; Laws 1983, LB 447, § 76.

**57-1002 Repealed. Laws 1983, LB 447, § 104.**

**ARTICLE 11**

**EMINENT DOMAIN FOR PIPELINES**

Section

- 57-1101. Acquisition of property by eminent domain; authorized; procedure.
- 57-1102. Crossing public roads or highways; rights acquired; restrictions.
- 57-1103. Easements across public lands; acquisition; assessment of damages.
- 57-1104. Appeal; procedure.
- 57-1105. Award; payment; rights acquired; limitation on determination on appeal.
- 57-1106. Breaking, injuring, damaging, or interfering with pipeline, plant, or equipment; penalty.

**57-1101 Acquisition of property by eminent domain; authorized; procedure.**

Any person engaged in, and any company, corporation, or association formed or created for the purpose of, transporting or conveying crude oil, petroleum, gases, or other products thereof in interstate commerce through or across the State of Nebraska or intrastate within the State of Nebraska, and desiring or requiring a right-of-way or other interest in real estate and being unable to agree with the owner or lessee of any land, lot, right-of-way, or other property for the amount of compensation for the use and occupancy of so much of any lot, land, real estate, right-of-way, or other property as may be reasonably necessary for the laying, relaying, operation, and maintenance of any such pipeline or the location of any plant or equipment necessary to operate such pipeline, shall have the right to acquire the same for such purpose through the exercise of the power of eminent domain, except that for any major oil pipeline as defined in section 57-1404 to be placed in operation in the State of Nebraska after November 23, 2011, any such person, company, corporation, or association shall comply with section 57-1503 and receive the approval of the Governor for the route of the pipeline under such section or shall apply for and receive an order approving the application under the Major Oil Pipeline Siting Act, prior to having the rights provided under this section. If condemnation procedures have not been commenced within two years after the date the Governor's approval is granted or after the date of receipt of an order approving an application under the Major Oil Pipeline Siting Act, the right under this section expires. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1963, c. 323, § 1, p. 979; Laws 2011, First Spec. Sess., LB1, § 1; Laws 2012, LB1161, § 1.

**Cross References**

**Major Oil Pipeline Siting Act**, see section 57-1401.

**57-1102 Crossing public roads or highways; rights acquired; restrictions.**

Any such person, company, corporation, or association, in the laying, relaying, operation, and maintenance of any such pipeline within the State of Nebraska, shall have the right to enter upon and cross, with such pipeline, any public road or highway, under such reasonable regulations and restrictions as may be prescribed by the Department of Transportation, if it is a state or federal highway, or by the county board of each county, as to all other public roads and highways within such county, and shall also have the right to lay, relay, operate, and maintain such pipeline in and along any public road or highway.

**Source:** Laws 1963, c. 323, § 2, p. 980; Laws 2017, LB339, § 179.

**57-1103 Easements across public lands; acquisition; assessment of damages.**

Any person engaged in, and any company, corporation, or association formed or created for the purpose of transporting or conveying crude oil, petroleum, or other products thereof, in interstate commerce through, or across the State of Nebraska, or intrastate within the State of Nebraska, and desiring or requiring a right-of-way in the nature of an easement, for the purpose of laying, relaying, operating and maintaining any pipeline or lines for such purpose in or across any of the public lands except school lands which are not subject to the provisions of section 57-1102, the title of which is vested in the State of Nebraska, shall have the right to acquire the same for such purpose by filing with the other governing body having title or supervision thereof, a plat describing the portion or portions of land, real estate, or right-of-way necessary for the laying, relaying, operating and maintaining of any such pipeline, and the governing body shall direct the county commissioners of the county or counties through which such pipeline right-of-way is desired, shown by petitioners' application and maps, to appraise and fix the amount to be paid by such person, company, corporation, or association for such right-of-way, and assess the damages therefor. Before making the assessment, the governing body shall notify the applicant of the time and place of such hearing by either certified or registered mail, to be mailed at least ten days prior to the hearing.

**Source:** Laws 1963, c. 323, § 3, p. 980; Laws 1967, c. 466, § 1, p. 1444.

**57-1104 Appeal; procedure.**

Any party objecting to such allowance may, within thirty days from the entering of the award, appeal to the district court of the county in which such lands are situated by entering into an undertaking to the State of Nebraska, to be approved by the Board of Educational Lands and Funds or governing body, in such sum as the board shall specify, conditioned (1) that the appellant shall prosecute such appeal to effect without unnecessary delay; and (2) that if judgment be rendered against such appellant, he will satisfy such judgment. Within ten days from the filing of such bond, the board or governing body shall make a certified transcript of such proceedings with the board or governing body and transmit the same to the district court of the county in which such lands are situated, where the same shall be heard before the court as a proceeding in equity.

**Source:** Laws 1963, c. 323, § 4, p. 981.

**57-1105 Award; payment; rights acquired; limitation on determination on appeal.**

Upon the determination of the amount by the Board of Educational Lands and Funds or governing body, the applicant shall pay the amount to the treasurer of the county in which such lands are situated, for the use of the permanent school fund of this state, if such lands are school lands; as to other public lands such payment shall be made to the State Treasurer for the use of the board or other governing body having title or supervision over such lands. Upon making said payment the applicant shall be vested with the right to lay, relay, operate and maintain such pipeline through the lands described in the proceedings, notwithstanding any appeal as taken or authorized by section 57-1104. Upon appeal the district court shall determine only the amount of the award and not whether a right-of-way is granted.

**Source:** Laws 1963, c. 323, § 5, p. 981.

**57-1106 Breaking, injuring, damaging, or interfering with pipeline, plant, or equipment; penalty.**

Any person who shall willfully and maliciously break, injure, damage, or otherwise interfere with, any such pipeline, plant, or equipment of any such person, company, corporation, or association, shall be guilty of a Class III misdemeanor.

**Source:** Laws 1963, c. 323, § 6, p. 981; Laws 1977, LB 39, § 60.

**ARTICLE 12**

**URANIUM SEVERANCE TAX**

Section

- 57-1201. Terms, defined.
- 57-1202. Tax; levy; person liable; due and payable; lien.
- 57-1203. Tax; rate.
- 57-1204. Tax; payment; when; reports; contents.
- 57-1205. Tax; remittance.
- 57-1206. Tax; security; notice; use.
- 57-1207. Report; payment of tax; by whom.
- 57-1208. Tax; deductions permitted.
- 57-1209. Tax; delinquent; action.
- 57-1210. Tax; when delinquent; penalty.
- 57-1211. False oath; penalty.
- 57-1212. Tax Commissioner; supervise tax collections; rules and regulations.
- 57-1213. Returns; failure to make; penalty.
- 57-1214. Delinquencies; Attorney General; county attorney; injunction.

**57-1201 Terms, defined.**

As used in sections 57-1201 to 57-1214, unless the context otherwise requires:

- (1) Person shall mean any natural person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, limited liability company, company, corporation, or person acting under a declaration of trust;
- (2) Sever shall mean to take from the land by any means whatsoever; and
- (3) Uranium shall mean tri-uranium oct-oxide.

**Source:** Laws 1983, LB 356, § 13; Laws 1993, LB 121, § 354.

**57-1202 Tax; levy; person liable; due and payable; lien.**

A tax is hereby levied on all uranium severed from the soil of this state. Such tax shall be paid by the person engaged in the severing of such uranium, shall become due and payable monthly, and shall operate as a first lien on all such uranium. Such lien shall follow the resource into the hands of third persons, whether the resource is acquired in good faith or bad faith or is in a manufactured or unmanufactured state.

**Source:** Laws 1983, LB 356, § 14.

**57-1203 Tax; rate.**

The tax imposed by section 57-1202 shall be levied on the value of the uranium severed, and shall be paid at the rate of two percent of the value of such uranium produced each year in excess of five million dollars gross value. The value shall be computed immediately after such severance at the place where the uranium is severed.

**Source:** Laws 1983, LB 356, § 15.

**57-1204 Tax; payment; when; reports; contents.**

The tax imposed by section 57-1202 shall be due and payable in monthly installments on or before the last day of the month next succeeding the month in which the uranium was severed. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the Tax Commissioner and postmarked before midnight of the final filing date. For good cause the Tax Commissioner may grant a taxpayer reasonable extensions of time for filing, not to exceed ten days in the aggregate for any one return.

The person engaged in the severing, on or before the last day of the month next succeeding the month in which the uranium was so severed, shall make out and file with the Tax Commissioner a report or return for the preceding month in such form as may be prescribed by the Tax Commissioner showing: The business conducted by the person engaged in the severing during the preceding month; the kind gross quantity, and value of the uranium so severed; the name of the owner of the resource at the time of the severance; the portion owned by each owner; the location of the place where the uranium is severed; and such other information as the Tax Commissioner may require.

**Source:** Laws 1983, LB 356, § 16.

**57-1205 Tax; remittance.**

The tax imposed by section 57-1202 shall be paid to the Tax Commissioner who shall pay all money received to the State Treasurer to be placed in the General Fund.

**Source:** Laws 1983, LB 356, § 17.

**57-1206 Tax; security; notice; use.**

The Tax Commissioner, whenever he or she deems it necessary to insure compliance with sections 57-1201 to 57-1214, may require any person subject to the tax imposed by section 57-1202 to deposit with the Tax Commissioner a suitable indemnity bond to insure payment of the tax as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect

any tax, interest, or penalty due. Notice of the use of the bond shall be given to such person by mail.

**Source:** Laws 1983, LB 356, § 18; Laws 2012, LB727, § 15.

**57-1207 Report; payment of tax; by whom.**

The tax imposed by section 57-1202 shall be paid and the report required by section 57-1204 shall be made by the person engaged in the severing of the uranium, whether or not he or she is the owner of the land from which the uranium is severed.

**Source:** Laws 1983, LB 356, § 19.

**57-1208 Tax; deductions permitted.**

The person remitting to the Tax Commissioner the tax imposed by section 57-1202 shall deduct, from the amount due any person owning an interest in the uranium or in the proceeds of the uranium at the time of severance, the proportionate amount of such tax before making payment to any such person.

**Source:** Laws 1983, LB 356, § 20.

**57-1209 Tax; delinquent; action.**

The Tax Commissioner may bring an action against any person engaged in the severing of uranium for the collection of taxes which are due and delinquent under sections 57-1201 to 57-1214.

**Source:** Laws 1983, LB 356, § 21.

**57-1210 Tax; when delinquent; penalty.**

The tax imposed by section 57-1202 shall become delinquent after the last day of each month and, in addition to the amount of the delinquent tax, there shall be paid and the Tax Commissioner shall collect a penalty for such delinquency in the amount of one percent of the delinquent taxes for each month, or part thereof, that the delinquency has continued.

**Source:** Laws 1983, LB 356, § 22.

**57-1211 False oath; penalty.**

Any person who shall intentionally make false oath to any return or report required by sections 57-1201 to 57-1214 shall be guilty of perjury and shall, upon conviction thereof, be punished as prescribed by section 28-915.

**Source:** Laws 1983, LB 356, § 23.

**57-1212 Tax Commissioner; supervise tax collections; rules and regulations.**

The Tax Commissioner shall supervise and enforce the collection of all taxes that may be due pursuant to sections 57-1201 to 57-1214. The commissioner may adopt and promulgate any rules and regulations necessary to carry out such sections, including, but not limited to, provisions concerning the manner in which the tax shall be paid and the form of required reports.

**Source:** Laws 1983, LB 356, § 24.

**57-1213 Returns; failure to make; penalty.**

Any person failing or refusing to make returns or reports, as required by sections 57-1201 to 57-1214, and remaining in default for thirty days after notice to him or her by the Tax Commissioner, or failing to comply with any other requirement of sections 57-1201 to 57-1214, shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1983, LB 356, § 25.

**57-1214 Delinquencies; Attorney General; county attorney; injunction.**

The Attorney General or the county attorney of the county in which the uranium is located may file a petition in the district court of such county and, upon such filing, the district court shall have the power to restrain by injunction any person from continuing to sever such uranium while delinquent in any report or the payment of any tax, penalty, or cost required by sections 57-1201 to 57-1214.

**Source:** Laws 1983, LB 356, § 26.

**ARTICLE 13**

**NATURAL GAS UTILITY SERVICE AREAS**

Section

- 57-1301. Transferred to section 66-1858.
- 57-1302. Transferred to section 66-1859.
- 57-1303. Transferred to section 66-1860.
- 57-1304. Transferred to section 66-1861.
- 57-1305. Transferred to section 66-1862.
- 57-1306. Transferred to section 66-1863.
- 57-1307. Transferred to section 66-1864.

**57-1301 Transferred to section 66-1858.**

**57-1302 Transferred to section 66-1859.**

**57-1303 Transferred to section 66-1860.**

**57-1304 Transferred to section 66-1861.**

**57-1305 Transferred to section 66-1862.**

**57-1306 Transferred to section 66-1863.**

**57-1307 Transferred to section 66-1864.**

**ARTICLE 14**

**MAJOR OIL PIPELINE SITING ACT**

Section

- 57-1401. Act, how cited.
- 57-1402. Purposes of act.
- 57-1403. Legislative findings.
- 57-1404. Terms, defined.
- 57-1405. Pipeline carrier; construction of major oil pipeline; application; substantive change to route; application; contents; notice.
- 57-1406. Commission; assess expenses; payment; neglect or refusal to pay; failure to file objection; notice of delinquency; collection.
- 57-1407. Commission; duties; public meetings; agency reports; approval by commission; considerations.

§ 57-1401

MINERALS, OIL, AND GAS

Section

- 57-1408. Commission order; findings; extension of time; status reports; notice of completion; denial of application; amended application; commission; duties.
- 57-1409. Appeal.
- 57-1410. Rules and regulations.
- 57-1411. Public Service Commission Pipeline Regulation Fund; created; use; investment.
- 57-1412. Commission; powers.
- 57-1413. Documents or records; not withheld from public.

**57-1401 Act, how cited.**

Sections 57-1401 to 57-1413 shall be known and may be cited as the Major Oil Pipeline Siting Act.

**Source:** Laws 2011, First Spec. Sess., LB1, § 2; Laws 2012, LB1161, § 2.

**57-1402 Purposes of act.**

(1) The purposes of the Major Oil Pipeline Siting Act are to:

- (a) Ensure the welfare of Nebraskans, including protection of property rights, aesthetic values, and economic interests;
- (b) Consider the lawful protection of Nebraska's natural resources in determining the location of routes of major oil pipelines within Nebraska;
- (c) Ensure that a major oil pipeline is not constructed within Nebraska without receiving the approval of the commission under section 57-1408;
- (d) Ensure that the location of routes for major oil pipelines is in compliance with Nebraska law; and
- (e) Ensure that a coordinated and efficient method for the authorization of such construction is provided.

(2) Nothing in the Major Oil Pipeline Siting Act shall be construed to regulate any safety issue with respect to any aspect of any interstate oil pipeline. The Major Oil Pipeline Siting Act is intended to deal solely with the issue of siting or choosing the location of the route aside and apart from safety considerations. The Legislature acknowledges and respects the exclusive federal authority over safety issues established by the federal law, the Pipeline Safety Act of 1994, 49 U.S.C. 60101 et seq., and the express preemption provision stated in that act. The Major Oil Pipeline Siting Act is intended to exercise only the remaining sovereign powers and purposes of Nebraska which are not included in the category of safety regulation.

**Source:** Laws 2011, First Spec. Sess., LB1, § 3; Laws 2012, LB1161, § 4.

**57-1403 Legislative findings.**

The Legislature finds that:

- (1) Nebraska has the authority as a sovereign state to protect its land and natural resources for economic and aesthetic purposes for the benefit of its residents and future generations by regulation through approval or disapproval of major oil pipeline siting and the location of routes, so long as it does not regulate in the area of safety as to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of major oil pipelines and pipeline facilities;



(2) The water and other natural resources in Nebraska will become increasingly valuable, both economically and strategically, as the demand for agricultural products for both food and fuel increases;

(3) The construction of major oil pipelines in Nebraska is in the public interest of Nebraska and the nation to meet the increasing need for energy; and

(4) The irrigation economy of Nebraska which relies on quality water adds over one billion dollars annually to net farm income and increases the gross state product by three billion dollars annually.

**Source:** Laws 2011, First Spec. Sess., LB1, § 4.

**57-1404 Terms, defined.**

For purposes of the Major Oil Pipeline Siting Act:

(1) Commission means the Public Service Commission;

(2) Major oil pipeline means a pipeline which is larger than six inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines; and

(3) Pipeline carrier means a person that engages in owning, operating, or managing a major oil pipeline.

**Source:** Laws 2011, First Spec. Sess., LB1, § 5; Laws 2012, LB1161, § 5.

**57-1405 Pipeline carrier; construction of major oil pipeline; application; substantive change to route; application; contents; notice.**

(1) If a pipeline carrier proposes to construct a major oil pipeline to be placed in operation in Nebraska after November 23, 2011, and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application with the commission and receive approval pursuant to section 57-1408 prior to beginning construction of the major oil pipeline within Nebraska. If a pipeline carrier proposes a substantive change to the route of a major oil pipeline and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application for the proposed change with the commission and receive approval pursuant to section 57-1408 prior to beginning construction relating to the proposed change. The applicant shall also file a copy of the application with the agencies listed in subsection (3) of section 57-1407.

(2) The application shall be accompanied by written agreement to pay expenses assessed pursuant to section 57-1406 and written testimony and exhibits in support of the application. The application shall include:

(a) The name and address of the pipeline carrier;

(b) A description of the nature and proposed route of the major oil pipeline and evidence of consideration of alternative routes;

(c) A statement of the reasons for the selection of the proposed route of the major oil pipeline;

(d) A list of the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located;

(e) A description of the product or material to be transported through the major oil pipeline;

(f) The person who will own the major oil pipeline;

(g) The person who will manage the major oil pipeline;

(h) A plan to comply with the Oil Pipeline Reclamation Act; and

(i) A list of planned methods to minimize or mitigate the potential impacts of the major oil pipeline to land areas and connected natural resources other than with respect to oil spills.

(3) The applicant shall publish notice of the application in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed and forward a copy of such notice to the commission. The applicant shall serve notice of the application upon the governing bodies of the counties and municipalities specified pursuant to subdivision (2)(d) of this section.

**Source:** Laws 2011, First Spec. Sess., LB1, § 6; Laws 2012, LB1161, § 6.

#### Cross References

**Oil Pipeline Reclamation Act**, see section 76-3301.

The Major Oil Pipeline Siting Act does not require gubernatorial denial prior to initiating an application proceeding. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

#### **57-1406 Commission; assess expenses; payment; neglect or refusal to pay; failure to file objection; notice of delinquency; collection.**

(1) The commission shall assess the expenses reasonably attributable to investigation and hearing regarding an application filed under section 57-1405, including expenses billed by agencies filing reports as required in subsection (3) of section 57-1407 and both direct and indirect expenses incurred by the commission or its staff or consultants, to the applicant as agreed under section 57-1405.

(2) The commission shall ascertain the expenses of any such investigation and hearing and by order assess such expenses against the applicant and shall render a bill therefor, by United States mail, to the applicant, either at the time the order under section 57-1408 is issued or from time to time during such application process. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such applicant, within fifteen days after the mailing thereof, such applicant shall pay to the commission the amount of the assessment for which it is billed. The commission shall remit the payment to the State Treasurer for credit to the Public Service Commission Pipeline Regulation Fund. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year. The commission shall direct the State Treasurer to credit any reimbursement of expenses billed by agencies pursuant to subsection (3) of section 57-1407 to the appropriate fund of the appropriate agency.

(3) If any applicant against which an assessment has been made pursuant to this section, within fifteen days after the notice of such assessment, (a) neglects or refuses to pay the same or (b) fails to file objections to the assessment with the commission as provided in subsection (4) of this section, the commission shall transmit to the State Treasurer a certified copy of the notice of assess-

ment, together with notice of neglect or refusal to pay the assessment, and on the same day the commission shall mail by registered mail to the applicant against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such applicant fails to pay such assessment to the State Treasurer within ten days after receipt of such notice and certified copy of such assessment, the assessment shall bear interest at the rate of fifteen percent per annum from and after the date on which the copy of the notice was mailed by registered mail to such applicant.

(4) Within fifteen days after the date of the mailing of any notice of assessment under subsection (2) of this section, the applicant against which such assessment has been made may file with the commission objections setting out in detail the ground upon which the applicant regards such assessment to be excessive, erroneous, unlawful, or invalid. The commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.

(5) If any assessment against which objections have been filed is not paid within ten days after service of an order finding that such objections have been overruled and disallowed by the commission, the commission shall give notice of such delinquency to the State Treasurer and to the applicant in the manner provided for in subsection (3) of this section. The State Treasurer shall then collect the amount of such assessment. If an amended assessment is not paid within ten days after service of the order of the commission, the commission shall notify the State Treasurer and the applicant as in the case of delinquency in the payment of an original assessment. The State Treasurer shall then collect the amount of such assessment as provided in the case of an original assessment.

**Source:** Laws 2011, First Spec. Sess., LB1, § 7.

**57-1407 Commission; duties; public meetings; agency reports; approval by commission; considerations.**

(1) After receipt of an application under section 57-1405, the commission shall:

- (a) Within sixty days, schedule a public hearing;
- (b) Notify the pipeline carrier of the time, place, and purpose of the public hearing;
- (c) Publish a notice of the time, place, and purpose of the public hearing in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed; and
- (d) Serve notice of the public hearing upon the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located as specified in subdivision (2)(d) of section 57-1405.

(2) The commission may hold additional public meetings for the purpose of receiving input from the public at locations as close as practicable to the proposed route of the major oil pipeline. The commission shall make the public input part of the record.

(3) If requested by the commission, the following agencies shall file a report with the commission, prior to the hearing on the application, regarding

information within the respective agencies' area of expertise relating to the impact of the major oil pipeline on any area within the respective agencies' jurisdiction, including in such report opinions regarding the advisability of approving, denying, or modifying the location of the proposed route of the major oil pipeline: The Department of Environment and Energy, the Department of Natural Resources, the Department of Revenue, the Department of Transportation, the Game and Parks Commission, the Nebraska Oil and Gas Conservation Commission, the Nebraska State Historical Society, the State Fire Marshal, and the Board of Educational Lands and Funds. The agencies may submit a request for reimbursement of reasonable and necessary expenses incurred for any consultants hired pursuant to this subsection.

(4) An application under the Major Oil Pipeline Siting Act shall be approved if the proposed route of the major oil pipeline is determined by the Public Service Commission to be in the public interest. The pipeline carrier shall have the burden to establish that the proposed route of the major oil pipeline would serve the public interest. In determining whether the pipeline carrier has met its burden, the commission shall not evaluate safety considerations, including the risk or impact of spills or leaks from the major oil pipeline, but the commission shall evaluate:

(a) Whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, and regulations and local ordinances;

(b) Evidence of the impact due to intrusion upon natural resources and not due to safety of the proposed route of the major oil pipeline to the natural resources of Nebraska, including evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources and the depletion of beneficial uses of the natural resources;

(c) Evidence of methods to minimize or mitigate the potential impacts of the major oil pipeline to natural resources;

(d) Evidence regarding the economic and social impacts of the major oil pipeline;

(e) Whether any other utility corridor exists that could feasibly and beneficially be used for the route of the major oil pipeline;

(f) The impact of the major oil pipeline on the orderly development of the area around the proposed route of the major oil pipeline;

(g) The reports of the agencies filed pursuant to subsection (3) of this section; and

(h) The views of the governing bodies of the counties and municipalities in the area around the proposed route of the major oil pipeline.

**Source:** Laws 2011, First Spec. Sess., LB1, § 8; Laws 2017, LB339, § 180; Laws 2019, LB302, § 61.

The Major Oil Pipeline Siting Act places the burden of proof on the applicant. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

The standard of proof applicable to proceedings under the Major Oil Pipeline Siting Act is preponderance of the evidence.

**57-1408 Commission order; findings; extension of time; status reports; notice of completion; denial of application; amended application; commission; duties.**

(1) Within seven months after the receipt of the application under section 57-1405, the commission shall enter an order approving the application or

denying the application. The commission shall include in the order the findings of the commission regarding the application and the reasons for approving or denying the application. The order approving the application shall state that the application is in the public interest and shall authorize the pipeline carrier to act under section 57-1101.

(2) The commission may, for just cause, extend the time for the entry of an order under subsection (1) of this section. The extension shall not exceed twelve months after the receipt of the application under section 57-1405 unless all parties agree to a longer extension, except that no extension shall extend more than eight months after the issuance of a presidential permit authorizing the construction of the major oil pipeline.

(3) If the commission approves the application, the pipeline carrier shall file a status report with the commission regarding the construction of the major oil pipeline every six months until the completion of the major oil pipeline within Nebraska. The pipeline carrier shall notify the commission of the completion of the major oil pipeline within Nebraska within thirty days after such completion.

(4) If the commission denies the application, the pipeline carrier may amend the denied application in accordance with the findings of the commission and submit the amended application within sixty days after the issuance of the order denying the application. Within sixty days after the receipt of the amended application, the commission shall enter an order approving or denying the amended application after making new findings under subsection (4) of section 57-1407.

**Source:** Laws 2011, First Spec. Sess., LB1, § 9.

#### **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.

#### **57-1410 Rules and regulations.**

The commission shall adopt and promulgate rules and regulations to carry out the Major Oil Pipeline Siting Act.

**Source:** Laws 2011, First Spec. Sess., LB1, § 11.

#### **57-1411 Public Service Commission Pipeline Regulation Fund; created; use; investment.**

The Public Service Commission Pipeline Regulation Fund is created. The fund shall be administered by the commission. The fund shall be used by the commission to carry out the Major Oil Pipeline Siting 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 2011, First Spec. Sess., LB1, § 12.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**57-1412 Commission; powers.**

The commission may contract for professional services and expert assistance, including, but not limited to, the services of engineers, hydrogeologists, accountants, attorneys, and economists, to assist with reviewing applications under the Major Oil Pipeline Siting Act.

**Source:** Laws 2011, First Spec. Sess., LB1, § 13.

**57-1413 Documents or records; not withheld from public.**

The commission shall not withhold any documents or records relating to a major oil pipeline from the public unless the documents or records are of the type that can be withheld under section 84-712.05 or unless federal law provides otherwise.

**Source:** Laws 2012, LB1161, § 3.

**ARTICLE 15****OIL PIPELINE PROJECTS**

## Section

57-1501. Legislative findings.

57-1502. Terms, defined.

57-1503. Evaluation of route; supplemental environmental impact statement; department; powers and duties; pipeline carrier; reimburse cost; submit to Governor; duty; denial; notice to pipeline carrier; documents or records; not withheld from public.

**57-1501 Legislative findings.**

The Legislature finds that:

(1) The State of Nebraska is responsible for protecting its natural resources, agricultural resources, aesthetics, economy, and communities through reasonable regulation for the common good and welfare. As such, the state is responsible for ensuring that an oil pipeline proposed to be located within, through, or across Nebraska is in compliance with all state laws, rules, and regulations relating to water, air, and wildlife under the Constitution of Nebraska and state law;

(2) Public policy should reflect this responsibility while simultaneously recognizing the necessity for energy use and the economic benefits to Nebraska of transporting oil within, through, or across the state, the need for economic development in Nebraska, and the opportunities for jobs and revenue that new development brings to the state;

(3) The United States has the important ability to work with foreign suppliers of crude oil to meet our overall energy needs and to further our national security interests; and

(4) The economic benefits of oil pipeline construction projects are important to the state, including the creation of jobs. Nevertheless, the benefits of any proposed oil pipeline project must be weighed against any concerns brought by the residents of Nebraska.

**Source:** Laws 2011, First Spec. Sess., LB4, § 1.

**57-1502 Terms, defined.**

For purposes of sections 57-1501 to 57-1503:

- (1) Department means the Department of Environment and Energy;
- (2) Oil pipeline means a pipeline which is larger than eight inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines; and
- (3) Pipeline carrier means an individual, a company, a corporation, an association, or any other legal entity that engages in owning, operating, or managing an oil pipeline.

**Source:** Laws 2011, First Spec. Sess., LB4, § 2; Laws 2019, LB302, § 62.

**57-1503 Evaluation of route; supplemental environmental impact statement; department; powers and duties; pipeline carrier; reimburse cost; submit to Governor; duty; denial; notice to pipeline carrier; documents or records; not withheld from public.**

(1)(a) The department may:

(i) Evaluate any route for an oil pipeline within, through, or across the state and submitted by a pipeline carrier for the stated purpose of being included in a federal agency's or agencies' National Environmental Policy Act review process. Any such evaluation shall include at least one public hearing, provide opportunities for public review and comment, and include, but not be limited to, an analysis of the environmental, economic, social, and other impacts associated with the proposed route and route alternatives in Nebraska. The department may collaborate with a federal agency or agencies and set forth the responsibilities and schedules that will lead to an effective and timely evaluation; or

(ii) Collaborate with a federal agency or agencies in a review under the National Environmental Policy Act involving a supplemental environmental impact statement for oil pipeline projects within, through, or across the state. Prior to entering into such shared jurisdiction and authority, the department shall collaborate with such agencies to set forth responsibilities and schedules for an effective and timely review process.

(b) A pipeline carrier that has submitted a route for evaluation or review pursuant to subdivision (1)(a) of this section shall reimburse the department for the cost of the evaluation or review within sixty days after notification from the department of the cost. The department shall remit any reimbursement to the State Treasurer for credit to the Environmental Cash Fund.

(2) The department may contract with outside vendors in the process of preparation of a supplemental environmental impact statement or an evaluation conducted under subdivision (1)(a) of this section. The department shall make every reasonable effort to ensure that each vendor has no conflict of interest or relationship to any pipeline carrier that applies for an oil pipeline permit.

(3) In order for the process to be efficient and expeditious, the department's contracts with vendors pursuant to this section for a supplemental environmental impact statement or an evaluation conducted under subdivision (1)(a) of this

section 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) After the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section is prepared, the department shall submit it to the Governor. Within thirty days after receipt of the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section from the department, the Governor shall indicate, in writing, to the federal agency or agencies involved in the review or any other appropriate federal agency or body as to whether he or she approves any of the routes reviewed in the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section. If the Governor does not approve any of the reviewed routes, he or she shall notify the pipeline carrier that in order to obtain approval of a route in Nebraska the pipeline carrier is required to file an application with the Public Service Commission pursuant to the Major Oil Pipeline Siting Act.

(5) The department shall not withhold any documents or records relating to an oil pipeline from the public unless the documents or records are of the type that can be withheld under section 84-712.05 or unless federal law provides otherwise.

**Source:** Laws 2011, First Spec. Sess., LB4, § 3; Laws 2012, LB858, § 16; Laws 2012, LB1161, § 7; Laws 2019, LB302, § 63.

#### Cross References

**Major Oil Pipeline Siting Act**, see section 57-1401.

**Nebraska Consultants' Competitive Negotiation Act**, see section 81-1702.

Absent a supermajority concurrence, the Nebraska Supreme Court could not invalidate a statute giving the Governor authority to approve an interstate oil pipeline carrier's proposed route through the State and bestow upon the carrier the power to exercise eminent domain, despite the majority's conclusion that the legislation is facially unconstitutional because it transfers the Public Service Commission's constitutional powers over common carriers to the Governor. *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

Under the citizen taxpayer exception for matters of "great public concern," an exception to the injury-in-fact standing requirement, landowners had standing to challenge the constitutionality of legislation giving the Governor the authority to approve a major oil pipeline route and thereby bestow upon the carrier the power to exercise eminent domain. *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

## ARTICLE 16

### NEBRASKA GEOLOGIC STORAGE OF CARBON DIOXIDE ACT

#### Section

- 57-1601. Act, how cited.
- 57-1602. Legislative findings and declarations.
- 57-1603. Terms, defined.
- 57-1604. Reservoir estate; title; conveyance; mineral estate; how treated.
- 57-1605. Commission; powers.
- 57-1606. Permit, required; transfer; consent from permitting authority.
- 57-1607. Permit; application; fee; costs; priority for processing.
- 57-1608. Hearing; notice; requirements.
- 57-1609. Permit; issuance; consultation required.
- 57-1610. Permit; issuance; findings.
- 57-1611. Permit or order; contents.
- 57-1612. Reservoir estates owned by nonconsenting owners; included when.
- 57-1613. Certificate; issuance; filing.
- 57-1614. Storage facility; commission; duties; effect on jurisdiction of Department of Environment and Energy.
- 57-1615. Act; permit; how construed.
- 57-1616. Fees; Carbon Dioxide Storage Facility Administrative Fund; created; use; investment.
- 57-1617. Fees; Carbon Dioxide Storage Facility Trust Fund; created; use; investment.



- Section  
 57-1618. Carbon dioxide; title; liability.  
 57-1619. Certificate of project completion; notice; hearing; consultation; issuance; conditions; effect.  
 57-1620. Violations; penalties.  
 57-1621. Agreements with government entities and state agencies; contracts authorized.  
 57-1622. Storage facility; cooperative operation.  
 57-1623. Geologic storage project; consent and participation; authorized.  
 57-1624. Storage amount; determination; fee.

**57-1601 Act, how cited.**

Sections 57-1601 to 57-1624 shall be known and may be cited as the Nebraska Geologic Storage of Carbon Dioxide Act.

**Source:** Laws 2021, LB650, § 1.  
 Effective date August 28, 2021.

**57-1602 Legislative findings and declarations.**

The Legislature finds, recognizes, and declares that it is in the public interest to promote the geologic storage of carbon dioxide. Doing so will benefit the state and the global environment by reducing greenhouse gas emissions and will help ensure the viability of the state’s energy and power industries, to the economic benefit of Nebraska and its citizens. Further, geologic storage of carbon dioxide, a potentially valuable commodity, may allow for its ready availability if needed for commercial, industrial, or other uses. Geologic storage, however, to be practical and effective, requires cooperative use of surface and subsurface property interests and the collaboration of property owners. Obtaining consent from all owners may not be feasible, requiring procedures that promote, in a manner fair to all interests, cooperative management, thereby ensuring the maximum use of natural resources. Use of any subsurface stratum and any materials and fluids contained therein for geologic storage of carbon dioxide is a reasonable and beneficial use.

**Source:** Laws 2021, LB650, § 2.  
 Effective date August 28, 2021.

**57-1603 Terms, defined.**

For purposes of the Nebraska Geologic Storage of Carbon Dioxide Act:

- (1) Applicable underground injection control program for each class of storage facility injection well means the program, or most recent amendment thereof, for that class of well in Nebraska as provided by federal law;
- (2) Carbon dioxide stream means carbon dioxide from anthropogenic sources, plus incidental associated substances derived from the source materials and the production or capture process, and any substances added to the stream to enable or improve the injection process if such substances will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain the stored carbon dioxide stream;
- (3) Commission means the Nebraska Oil and Gas Conservation Commission;
- (4) Geologic storage means the permanent or short-term underground storage of carbon dioxide streams in a storage reservoir;

(5) Permit means a permit issued by the commission under the Nebraska Geologic Storage of Carbon Dioxide Act allowing a person to operate a storage facility;

(6) Reservoir means a subsurface stratum, formation, cavity, or void, whether natural or artificially created, suitable for or capable of receiving through a well and geologically storing a carbon dioxide stream;

(7) Reservoir estate means ownership of any portion of a storage reservoir;

(8) Storage facility means the storage reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a geologic storage operation. The term includes the injection well and equipment used to connect the surface facility and equipment to the storage reservoir and underground equipment. The term does not include pipelines used to transport carbon dioxide to the storage facility;

(9) Storage operator means a person holding or applying for a permit under the act; and

(10) Storage reservoir means the reservoir proposed, authorized, or used for storing one or more carbon dioxide streams pursuant to a permit. The term does not include reservoirs used for purposes other than storage of carbon dioxide streams.

**Source:** Laws 2021, LB650, § 3.

Effective date August 28, 2021.

**57-1604 Reservoir estate; title; conveyance; mineral estate; how treated.**

(1) Title to any reservoir estate underlying the surface of lands and waters is vested in the owner of the overlying surface estate unless it has been severed and separately conveyed.

(2) A conveyance of the surface ownership of real property shall be a conveyance of the reservoir estate ownership in all strata below the surface of such real property unless the ownership interest in such reservoir estate previously has been severed from the surface ownership or is explicitly excluded in the conveyance. The ownership of reservoir estates may be conveyed in the manner provided by law for the transfer of mineral interests in real property. No agreement or instrument conveying mineral or other interests underlying the surface shall act to convey ownership of any reservoir estate unless the agreement explicitly conveys that ownership interest.

(3) No provision of law, including a lawfully adopted rule or regulation, requiring notice to be given to a surface owner, to an owner of a mineral interest, or to both, shall be construed to require notice to persons holding ownership interest in any underlying reservoir estate unless the law specifies notice to such persons is required.

(4) Nothing in this section shall be construed to change or alter the common law existing as of August 28, 2021, as it relates to the rights belonging to, or the dominance of, the mineral estate. For the purpose of determining the priority of subsurface uses between a severed mineral estate and reservoir estate as described in this section, the severed mineral estate is dominant regardless of whether ownership of the reservoir estate is vested in the several owners of the surface or is owned separately from the surface.

(5) All instruments which transfer the rights to reservoir estates under this section shall describe the scope of any right of the owner of the reservoir estate

to use the surface estate. The owner of any reservoir estate right shall have no right to use the surface estate beyond that set out in a properly recorded instrument.

(6) Transfers of reservoir estate rights made after August 28, 2021, are null and void at the option of the owner of the surface estate if the transfer instrument does not contain a specific description of the location of the reservoir estate being transferred. The description may include but is not limited to a subsurface geologic or seismic survey or a metes and bounds description of the surface lying over the transferred reservoir estate. In the event a description of the surface is used, the transfer shall be deemed to include the reservoir estate at all depths underlying the described surface area unless specifically excluded. The validity of reservoir estate rights under this subsection shall not affect the respective liabilities of any party, and such liabilities shall operate in the same manner as if the reservoir estate transfer were valid.

(7) Nothing in this section shall alter, amend, diminish, or invalidate rights to the use of subsurface reservoir estates that were acquired by contract or lease prior to August 28, 2021.

**Source:** Laws 2021, LB650, § 4.  
Effective date August 28, 2021.

**57-1605 Commission; powers.**

The commission has authority:

- (1) Over all persons and property necessary to administer and enforce the Nebraska Geologic Storage of Carbon Dioxide Act and its objectives;
- (2) To regulate activities relating to a storage facility, including construction, operation, and closure;
- (3) To enter, at a reasonable time and in a reasonable manner, a storage facility to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility;
- (4) To require that storage operators provide assurance, including bonds, that money is available to fulfill the storage operator's duties;
- (5) To exercise continuing jurisdiction over storage operators and storage facilities, including the authority, after notice and hearing, to amend provisions in a permit and to revoke a permit; and
- (6) To grant, for good cause, exceptions to the act's requirements and the requirements of any implementing rules and regulations.

**Source:** Laws 2021, LB650, § 5.  
Effective date August 28, 2021.

**57-1606 Permit, required; transfer; consent from permitting authority.**

Geologic storage is allowed if a permit has been obtained from both the commission and the Underground Injection Control program permitting authority. A permit may be transferred if the commission and the Underground Injection Control program permitting authority consent.

**Source:** Laws 2021, LB650, § 6.  
Effective date August 28, 2021.

**57-1607 Permit; application; fee; costs; priority for processing.**

(1) A person applying for a permit shall:

(a) Comply with application requirements set by the commission;

(b) Pay a fee in an amount set by the commission. The amount of the fee shall be set by rule and regulation and shall be based on the commission's anticipated cost of processing the application. The fee shall be deposited in the Carbon Dioxide Storage Facility Administrative Fund; and

(c) Pay to the commission the costs the commission incurs in publishing notices for hearings and holding hearings on permit applications.

(2) In processing permit applications, the commission shall give priority to storage operators who intend to store carbon dioxide produced in Nebraska.

**Source:** Laws 2021, LB650, § 7.

Effective date August 28, 2021.

**57-1608 Hearing; notice; requirements.**

(1) The commission shall hold a public hearing before issuing a permit.

(2) Notice of the hearing shall be provided in accordance with section 57-911 and commission rules and regulations adopted and promulgated thereunder.

(3) Notice of the hearing shall be given to each mineral lessee, mineral owner, and reservoir estate owner within the storage reservoir and within one-half mile of the storage reservoir's boundaries.

(4) Notice of the hearing shall be given to each surface owner of land overlying the storage reservoir and within one-half mile of the storage reservoir's boundaries.

(5) Notice of the hearing shall be given to any additional persons that the commission requires.

(6) Hearing notices required by this section shall comply with deadlines set by the commission and shall contain the information the commission requires.

**Source:** Laws 2021, LB650, § 8.

Effective date August 28, 2021.

**57-1609 Permit; issuance; consultation required.**

Before issuing a permit, the commission shall consult with the Department of Environment and Energy and the Underground Injection Control program permitting authority.

**Source:** Laws 2021, LB650, § 9.

Effective date August 28, 2021.

**57-1610 Permit; issuance; findings.**

Before issuing a permit, the commission shall find:

(1) That the storage operator has complied with all requirements set by the commission;

(2) That the storage facility is suitable and feasible for carbon dioxide injection and storage;

(3) That the carbon dioxide to be stored is of a quality that allows it to be safely and efficiently stored in the storage reservoir;

- (4) That the proposed storage facility will not endanger surface waters or underground sources of drinking water;
- (5) That carbon dioxide will not escape into the atmosphere or surface waters from the storage reservoir;
- (6) That the storage facility will not endanger human health or unduly endanger the environment;
- (7) That the horizontal and vertical boundaries of the storage reservoir are defined;
- (8) That the storage operator will establish a testing and monitoring plan to assess the location and migration of carbon dioxide injected for storage and to ensure compliance with all permit, statutory, and administrative requirements;
- (9) That the storage operator has satisfied all of the requirements in subdivisions (2) through (8) of this section if the storage operator has obtained all permits required by the applicable underground injection control program permitting authority for each storage facility injection well;
- (10) That the storage facility is in the public interest;
- (11) In accordance with the United States Environmental Protection Agency Underground Injection Control Program, that the storage operator has completed a comprehensive geologic study which includes a seismic risk assessment;
- (12) That the storage operator has made a good-faith effort to obtain the consent of all persons who own reservoir estates within the storage reservoir;
- (13) That the storage operator has obtained the consent of persons who own reservoir estates comprising at least sixty percent of the physical volume contained within the defined storage reservoir;
- (14) Whether the storage reservoir contains commercially valuable minerals. If it does, a permit may be issued only if the commission is satisfied that the interests of the mineral owners or mineral lessees will not be adversely affected or have been addressed in an arrangement entered into by the mineral owners or mineral lessees and the storage operator; and
- (15) That all nonconsenting reservoir estate owners are or will be equitably compensated.

**Source:** Laws 2021, LB650, § 10.  
Effective date August 28, 2021.

**57-1611 Permit or order; contents.**

The commission may include in a permit or order all things necessary to carry out the objectives of the Nebraska Geologic Storage of Carbon Dioxide Act and to protect and adjust the respective rights and obligations of persons affected by geologic storage.

**Source:** Laws 2021, LB650, § 11.  
Effective date August 28, 2021.

**57-1612 Reservoir estates owned by nonconsenting owners; included when.**

If a storage operator does not obtain the consent of all persons who own a reservoir estate within the storage reservoir, the commission may require that

any reservoir estates owned by nonconsenting owners be included in a storage facility and subject to geologic storage.

**Source:** Laws 2021, LB650, § 12.  
Effective date August 28, 2021.

**57-1613 Certificate; issuance; filing.**

When the commission issues a permit, it shall also issue a certificate stating that the permit has been issued, describing the area covered, and containing other information the commission deems appropriate. The commission shall file a copy of the certificate with the register of deeds in the county or counties where the storage facility is located.

**Source:** Laws 2021, LB650, § 13.  
Effective date August 28, 2021.

**57-1614 Storage facility; commission; duties; effect on jurisdiction of Department of Environment and Energy.**

(1) The commission shall take action to ensure that a storage facility does not cause pollution or create a nuisance. For the purposes of this provision and in applying other laws, carbon dioxide streams stored, and which remain in storage under a commission permit, are not a pollutant and do not constitute a nuisance.

(2) The commission's authority in subsection (1) of this section does not limit the jurisdiction held by the Department of Environment and Energy. Nothing else in the Nebraska Geologic Storage of Carbon Dioxide Act limits the jurisdiction held by the Department of Environment and Energy.

(3) The commission shall take action to ensure that substances that compromise the objectives of the act or the integrity of a storage reservoir do not enter a storage reservoir.

(4) The commission shall take action to ensure that carbon dioxide does not escape from a storage facility.

**Source:** Laws 2021, LB650, § 14.  
Effective date August 28, 2021.

**57-1615 Act; permit; how construed.**

The Nebraska Geologic Storage of Carbon Dioxide Act and any issuance of a permit under the act shall not be construed to:

(1) Prejudice the rights of property owners within a storage facility to exercise rights that have not been committed to a storage facility;

(2) Prevent a mineral owner or mineral lessee from drilling through or near a storage reservoir to explore for and develop minerals if the drilling, production, and related activities comply with commission requirements that preserve the storage facility's integrity and protect the objectives of the act; or

(3) Amend or alter any statute, rule, or regulation in effect on August 28, 2021, which relates to the commission's authority to regulate operations to increase ultimate recovery from a pool as defined in section 57-903, including, but not limited to, the introduction of carbon dioxide into a pool.

**Source:** Laws 2021, LB650, § 15.  
Effective date August 28, 2021.

**57-1616 Fees; Carbon Dioxide Storage Facility Administrative Fund; created; use; investment.**

(1) Storage operators shall pay the commission a fee on each ton of carbon dioxide injected for storage. The fee shall be in an amount set by the commission in rules and regulations adopted and promulgated by the commission. The amount shall be based on the commission's anticipated expenses in regulating storage facilities during their construction, operational, and preclosure phases.

(2) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Carbon Dioxide Storage Facility Administrative Fund, which is hereby created. The fund shall be administered by the commission and shall be used only for defraying the commission's expenses in processing permit applications, regulating storage facilities during their construction, operational, and preclosure phases, and making storage amount determinations under section 57-1624. The commission, however, through a cooperative or interlocal cooperation agreement with another state agency, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out regulatory responsibilities such agency may have over a storage facility. Interest earned by the fund shall be deposited in the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Transfers from the fund are not permitted.

**Source:** Laws 2021, LB650, § 16.  
Effective date August 28, 2021.

**Cross References**

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

**57-1617 Fees; Carbon Dioxide Storage Facility Trust Fund; created; use; investment.**

(1) In addition to the fee required under section 57-1616, storage operators shall pay the commission a fee on each ton of carbon dioxide injected for storage. The fee shall be in an amount set by the commission in rules and regulations adopted and promulgated by the commission. The amount shall be based on the commission's anticipated expenses associated with long-term monitoring and management of the storage facility following issuance of the certificate of project completion under section 57-1619.

(2) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Carbon Dioxide Storage Facility Trust Fund, which is hereby created. The fund shall be administered by the commission and shall be used only for defraying expenses the commission incurs in long-term monitoring and management of a closed storage facility. The commission, however, through a cooperative or interlocal cooperation agreement with another state agency, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out regulatory responsibilities such agency may have over a storage facility. Interest earned by the fund shall be deposited in the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the

Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Transfers from the fund are not permitted.

**Source:** Laws 2021, LB650, § 17.  
Effective date August 28, 2021.

**Cross References**

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

**57-1618 Carbon dioxide; title; liability.**

The storage operator has title to the carbon dioxide injected into and stored in a storage reservoir and holds title until the commission issues a certificate of project completion under section 57-1619. While the storage operator holds title, the operator is liable for any damage the carbon dioxide may cause, including damage caused by carbon dioxide that escapes from the storage facility.

**Source:** Laws 2021, LB650, § 18.  
Effective date August 28, 2021.

**57-1619 Certificate of project completion; notice; hearing; consultation; issuance; conditions; effect.**

(1) After carbon dioxide injections into a reservoir end and upon application by the storage operator, the commission shall consider issuing a certificate of project completion.

(2) The certificate may only be issued after public notice and hearing. The commission shall establish notice requirements for such hearing.

(3) The certificate may only be issued after the commission has consulted with the Department of Environment and Energy and the Underground Injection Control program permitting authority.

(4) The certificate may only be issued if the storage operator:

(a) Is in full compliance with all laws governing the storage facility;

(b) Shows that it has addressed all pending claims regarding the storage facility's operation;

(c) Shows that it has received an authorization of site closure from the applicable underground injection control program permitting authority for each storage facility injection well; and

(d) Shows that any wells, equipment, and facilities to be used in the post-closure period are in good condition and retain mechanical integrity.

(5) Once a certificate is issued:

(a) Title to the storage facility and to the stored carbon dioxide transfers, without payment of any compensation, to the State of Nebraska;

(b) Title acquired by the state includes all rights and interests in, and all responsibilities associated with, the stored carbon dioxide;

(c) The storage operator and all persons who generated any injected carbon dioxide streams are released from all regulatory requirements associated with the storage facility;

(d) Any financial assurance provided by the storage operator shall be released; and



(e) Monitoring and managing the storage facility is the state’s responsibility to be overseen by the commission.

**Source:** Laws 2021, LB650, § 19.  
Effective date August 28, 2021.

**57-1620 Violations; penalties.**

(1) Any person who violates any provision of the Nebraska Geologic Storage of Carbon Dioxide Act or any rule, regulation, or order of the commission under the act shall be guilty of a Class II misdemeanor. Each day that such violation continues shall constitute a separate offense.

(2) If any person, for the purpose of evading the provisions of the act or any rule, regulation, or order of the commission under the act, makes or causes to be made any false entry or statement in a report required by the act or by any such rule, regulation, or order, makes or causes to be made any false entry in any record, account, or memorandum required by the act or by any such rule, regulation, or order, or removes from this state or destroys, mutilates, alters, or falsifies any such record, account, or memorandum, such person shall be guilty of a Class II misdemeanor.

(3) Any person who knowingly aids or abets any other person in the violation of any provision of the act or any rule, regulation, or order of the commission under the act shall be subject to the same penalty as that prescribed by the act for the violation by such other person.

(4) The penalties provided in this section shall be recoverable by suit filed by the Attorney General in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of any such penalty shall not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

(5) In determining the amount of the penalty, the court shall consider:

(a) The nature of the violation, including its circumstances and gravity, and the hazard or potential hazard to the public’s or a private person’s health, safety, and economic welfare;

(b) The economic or environmental harm caused by the violation;

(c) The economic value or other advantage gained by the person committing the violation;

(d) The history of previous violations;

(e) The amount necessary to deter future violations;

(f) Efforts to correct the violation; and

(g) Other matters justice requires.

**Source:** Laws 2021, LB650, § 20.  
Effective date August 28, 2021.

**57-1621 Agreements with government entities and state agencies; contracts authorized.**

(1) The commission may enter into agreements with other government entities and state agencies for the purpose of carrying out the objectives of the

Nebraska Geologic Storage of Carbon Dioxide Act, including agreements under the Interlocal Cooperation Act when applicable.

(2) The commission may enter into contracts with private persons to assist it in carrying out the objectives of the act.

**Source:** Laws 2021, LB650, § 21.  
Effective date August 28, 2021.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**57-1622 Storage facility; cooperative operation.**

Cooperative operation of a storage facility under a permit issued by the commission does not violate Nebraska statutes relating to trusts, monopolies, or restraint of trade.

**Source:** Laws 2021, LB650, § 22.  
Effective date August 28, 2021.

**57-1623 Geologic storage project; consent and participation; authorized.**

State agencies and political subdivisions are authorized to consent to and participate in a geologic storage project.

**Source:** Laws 2021, LB650, § 23.  
Effective date August 28, 2021.

**57-1624 Storage amount; determination; fee.**

(1) The commission, under procedures and criteria it may adopt, shall determine the amount of injected carbon dioxide stored in a storage reservoir.

(2) The purpose for determining storage amounts is to facilitate using the stored carbon dioxide for such matters as carbon credits, allowances, trading, emissions allocations, and offsets, and for other similar purposes.

(3) The commission may charge a reasonable fee to the person requesting a storage determination. Any such fee shall be set by the commission in rules and regulations adopted and promulgated by the commission.

(4) Any fees received by the commission under this section for storage determinations shall be remitted to the State Treasurer for credit to the Carbon Dioxide Storage Facility Administrative Fund.

**Source:** Laws 2021, LB650, § 24.  
Effective date August 28, 2021.

## CHAPTER 58

### MONEY AND FINANCING

#### Article.

1. Money. 58-101, 58-102.
2. Nebraska Investment Finance Authority. 58-201 to 58-272.
3. Small Business Development. Repealed.
4. Research and Development Authority. Repealed.
5. Nebraska Redevelopment Act. 58-501 to 58-533.
6. Nebraska Uniform Prudent Management of Institutional Funds Act. 58-601 to 58-619.
7. Nebraska Affordable Housing Act. 58-701 to 58-711.
8. Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act. 58-801 to 58-866.

#### ARTICLE 1

##### MONEY

###### Cross References

**Attachment**, subject to, see section 25-1004.

**Definition of money for tax purposes**, see section 77-106.

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#### Section

58-101. Money; denominations; public payments.

58-102. Money; demand expressed in another denomination; effect.

#### **58-101 Money; denominations; public payments.**

The money of account of this state is the dollar, cent and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in money of the above denominations.

**Source:** R.S.1866, c. 37, § 1, p. 269; R.S.1913, § 4015; C.S.1922, § 3418; C.S.1929, § 58-101; R.S.1943, § 58-101.

#### **58-102 Money; demand expressed in another denomination; effect.**

The provisions of section 58-101 shall not in any manner affect any demand expressed in money of another denomination; but such demand, in any suit or proceeding affecting the same, shall be reduced to the denominations in that section given.

**Source:** R.S.1866, c. 37, § 2, p. 269; R.S.1913, § 4016; C.S.1922, § 3419; C.S.1929, § 58-102; R.S.1943, § 58-102.

#### ARTICLE 2

##### NEBRASKA INVESTMENT FINANCE AUTHORITY

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#### **58-201 Act, how cited.**

Sections 58-201 to 58-272 shall be known and may be cited as the Nebraska Investment Finance Authority Act.

**Source:** Laws 1983, LB 626, § 1; Laws 1986, LB 1230, § 29; Laws 1989, LB 311, § 1; Laws 1989, LB 706, § 1; Laws 1991, LB 253, § 1; Laws 1992, LB 1001, § 2; Laws 1996, LB 1322, § 1; Laws 2002, LB 1211, § 3; Laws 2006, LB 693, § 1.

#### **58-202 Cost and availability of financing; legislative findings and declarations.**

(1) The Legislature hereby finds and declares that:

(a) The high cost of agricultural loans and the general unavailability of such loans at favorable rates and terms for farmers, particularly beginning farmers, and other agricultural enterprises have resulted in decreased crop, livestock, and business productivity and prevented farmers and other agricultural enterprises from acquiring modern agricultural equipment and processes. These problems have made it difficult for farmers and other agricultural enterprises to maintain or increase their present number of employees and have decreased

the supply of agricultural commodities available to fulfill the needs of the citizens of this state; and

(b) There exists in this state an inadequate supply of and a pressing need for farm credit and agricultural loan financing at interest rates and terms which are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(2) The Legislature hereby finds and declares that:

(a) From time to time the high rates of interest charged by mortgage lenders seriously restrict existing housing transfers and new housing starts and the resultant reduction in residential construction starts causes a condition of substantial unemployment and underemployment in the construction industry;

(b) Such conditions generally result in and contribute to the creation of slums and blighted areas in the urban and rural areas of this state and a deterioration of the quality of living conditions within this state and necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident prevention, and other public services and facilities; and

(c) There exists in the urban and rural areas of this state an inadequate supply of and a pressing need for sanitary, safe, and uncrowded housing at prices at which low-income and moderate-income persons, particularly first-time homebuyers, can afford to purchase, construct, or rent and as a result such persons are forced to occupy unsanitary, unsafe, and overcrowded housing.

(3) The Legislature hereby finds and declares that:

(a) Adequate and reliable energy supplies are a basic necessity of life and sufficient energy supplies are essential to supplying adequate food and shelter;

(b) The cost and availability of energy supplies has been and will continue to be a matter of state and national concern;

(c) The increasing cost and decreasing availability of energy supplies for purposes of residential heating will limit the ability of many of Nebraska's citizens to provide the basic necessities of life and will result in a deterioration in living conditions and a threat to the health and welfare of the citizens of this state;

(d) Energy conservation through building modifications including, but not limited to, insulation, weatherization, and the installation of alternative energy devices has been shown to be a prudent means of reducing energy consumption costs and the need for additional costly facilities to produce and supply energy;

(e) Because of the high cost of available capital, the purchase of energy conservation devices is not possible for many Nebraskans. The prohibitively high interest rates for private capital create a situation in which the necessary capital cannot be obtained solely from private enterprise sources and there is a need for the stimulation of investment of private capital, thereby encouraging the purchase of energy conservation devices and energy conserving building modifications;

(f) The increased cost per capita of supplying adequate life-sustaining energy needs has reduced the amount of funds, both public and private, available for providing other necessities of life, including food, health care, and safe, sanitary housing; and

(g) The continuing purchase of energy supplies results in the transfer of ever-increasing amounts of capital to out-of-state energy suppliers.

(4) The Legislature hereby finds and declares that:

(a) There exist within this state unemployment and underemployment especially in areas of basic economic activity, caused by economic decline and need for diversification of the economic base, needlessly increasing public expenditures for unemployment compensation and welfare, decreasing the tax base, reducing tax revenue, and resulting in economic and social liabilities to the entire state;

(b) Such unemployment and underemployment cause areas of the state to deteriorate and become substandard and blighted and such conditions result in making such areas economic or social liabilities harmful to the economic and social well-being of the entire state and the communities in which they exist, needlessly increasing public expenditures, imposing onerous state and municipal burdens, decreasing the tax base, reducing tax revenue, substantially impairing or arresting the sound growth of the state and the municipalities, depreciating general state and community-wide values, and contributing to the spread of disease and crime which necessitate excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire, and accident protection, and for other public services and facilities;

(c) There exist within this state conditions resulting from the concentration of population of various counties, cities, and villages which require the construction, maintenance, and operation of adequate hospital and nursing facilities for the care of the public health. Since these conditions cannot be remedied by the ordinary operations of private enterprises and since provision of adequate hospital, nursing, and medical care is a public use, it is in the public interest that adequate hospital and medical facilities and care be provided in order to care for and protect the public health and welfare;

(d) Creation of basic economic jobs in the private sector and the promotion of health and welfare by the means provided under the Nebraska Investment Finance Authority Act and the resulting reduction of needless public expenditures, expansion of the tax base, provision of hospitals and health care and related facilities, and increase of tax revenue are needed within this state; and

(e) Stimulation of economic development throughout the state and the provision of health care at affordable prices are matters of state policy, public interest, and statewide concern and within the powers and authority inherent in and reserved to the state in order that the state and its municipalities shall not continue to be endangered by areas which consume an excessive proportion of their revenue, in order that the economic base of the state may be broadened and stabilized thereby providing jobs and necessary tax base, and in order that adequate health care services be provided to all residents of this state.

(5) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist municipalities, as defined in section 81-15,149, in providing wastewater treatment facilities and safe drinking water facilities. The federal funding provided for wastewater treatment facilities is extremely limited while the need to provide and improve wastewater treatment facilities and safe drinking water facilities is great;

(b) The construction, development, rehabilitation, and improvement of modern and efficient sewer systems and wastewater treatment facilities are essential to protecting and improving the state's water quality, the provision of adequate wastewater treatment facilities and safe drinking water facilities is essential to economic growth and development, and new sources of financing for such projects are needed;

(c) The federal government has acted to end the system of federal construction grants for clean water projects and has instead provided for capitalization grants to capitalize state revolving funds for wastewater treatment projects and will soon expand that to include safe drinking water facilities, and the state has created or is expected to create appropriate funds or accounts for such purpose. The state is required or expected to be required to provide matching funds for deposit into such funds or accounts, and there is a need for financing in excess of the amount which can be provided by the federal money and the state match; and

(d) Additional assistance can be provided to municipalities as defined in section 81-15,149 to alleviate the problems of water pollution or the provision of safe drinking water by providing for the issuance of revenue bonds, the proceeds of which shall be deposited into the Wastewater Treatment Facilities Construction Loan Fund or the comparable state fund to finance safe drinking water facilities. Nothing in this section shall prohibit the provision of loans, including loans made pursuant to the Conservation Corporation Act, to a municipality as defined in section 81-15,149 for the construction, development, rehabilitation, operation, maintenance, and improvement of wastewater treatment facilities or safe drinking water facilities.

(6) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist public school boards and school districts and private for-profit or not-for-profit schools in connection with removal of materials determined to be hazardous to the health and well-being of the residents of the state and the reduction or elimination of accessibility barriers and that the federal funding provided for such projects is extremely limited and the need and requirement to remove such materials and to reduce or eliminate accessibility barriers from school buildings is great;

(b) The financing of the removal of such environmental hazards and the reduction or elimination of accessibility barriers is essential to protecting and improving the facilities in the state which provide educational benefits and services;

(c) The federal government has directed schools to remove such hazardous materials and to reduce or eliminate accessibility barriers; and

(d) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and assist in the financing of the removal of environmental hazards and the reduction or elimination of accessibility barriers in educational facilities in this state in order to provide for a clean, safe, and accessible environment to protect the health and welfare of the citizens and residents of this state.

(7) The Legislature hereby finds and declares that:



(a) The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the ground water supply. In addition, the nature of the waste and the disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition;

(b) Wastes filling Nebraska's landfills may at best represent a potential resource, but without proper management wastes are hazards to the environment and to the public health and welfare;

(c) The growing concern with ground water protection and the desire to avoid financial risks inherent in ground water contamination have caused many smaller landfills to close in favor of using higher-volume facilities. Larger operations allow for better ground water protection at a relatively lower and more manageable cost;

(d) The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to landfills and increase the supply of reusable materials for the use of the public;

(e) There is a need within this state for financing to assist counties, cities, villages, entities created under the Interlocal Cooperation Act and the Joint Public Agency Act, and private persons with the construction and operation of new solid waste disposal areas or facilities and with the closure, monitoring, and remediation of existing solid waste disposal areas and facilities;

(f) Financing the construction and operation of new solid waste disposal areas and facilities and financing the closure, monitoring, and remediation of existing and former solid waste disposal areas and facilities in the state is essential to protect the environment and the public health and welfare;

(g) The federal government has directed that effective October 1, 1993, all solid waste disposal areas and facilities shall be upgraded to meet stringent siting, design, construction, operation, closure, monitoring, and remediation requirements; and

(h) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and to assist in the financing of solid waste disposal areas and facilities and in the removal of environmental hazards in solid waste disposal areas and facilities in this state in order to provide for a clean environment to protect the health and welfare of the citizens and residents of this state.

(8) The Legislature hereby finds and declares that:

(a) During emergencies the resources of political subdivisions must be effectively directed and coordinated to public safety agencies to save lives, to protect property, and to meet the needs of citizens;

(b) There exists a need for public safety communication systems for use by Nebraska's public safety agencies as defined in the Nebraska Public Safety Communication System Act;

(c) Investment in the public safety communication infrastructure is required to ensure the effectiveness of such public safety agencies. Since the maintenance of public safety is a paramount concern but the cost of purchasing and operating multiple communication infrastructures is prohibitive, it is impera-

tive that political subdivisions cooperate in their efforts to obtain real and personal property to establish, operate, maintain, and manage public safety communication systems; and

(d) There is a need within this state for financing to assist political subdivisions and any entities created under the Interlocal Cooperation Act and the Joint Public Agency Act with the acquisition, construction, and operation of real and personal property of public safety communication systems.

(9) The Legislature hereby finds and declares that, as of May 27, 2005, and in connection with the financing of agricultural projects, there is a need to increase both the limit on individual net worth and the limit on the aggregate loan amount that may be provided by the authority. Such adjustments are necessary to address the inadequate supply of and pressing need for farm credit and agricultural loan financing at interest rates and terms that are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(10) The Legislature hereby finds and declares that:

(a) The amount of funding and other resources available to remedy the problems identified in this section has been, and continues to be, insufficient. Accordingly, the authority must be provided with additional powers to adequately address the problems identified in this section with funding derived from public and private sources and state and federal sources;

(b) Carrying out the purposes of the Nebraska Investment Finance Authority Act may necessitate innovative agreements with public agencies and private entities and it is the policy of this state to encourage such public-private and intergovernmental cooperation; and

(c) Better, more broad-based sources of financing must be made available to the authority and by the authority to the private sector of the economy to enable the authority to address the problems identified in this section.

**Source:** Laws 1983, LB 626, § 2; Laws 1989, LB 311, § 2; Laws 1989, LB 706, § 2; Laws 1991, LB 253, § 2; Laws 1992, LB 1001, § 3; Laws 1992, LB 1257, § 67; Laws 1996, LB 1322, § 2; Laws 1999, LB 87, § 77; Laws 2002, LB 1211, § 4; Laws 2005, LB 90, § 16; Laws 2005, LB 343, § 1; Laws 2006, LB 693, § 2.

#### Cross References

**Conservation Corporation Act**, see section 2-4201.

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Nebraska Public Safety Communication System Act**, see section 86-401.

#### 58-203 Authority; purpose for creation.

(1) The problems enumerated in section 58-202 cannot alone be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the creation of a quasi-governmental body to:

(a) Encourage the investment of private capital and stimulate the construction of sanitary, safe, and uncrowded housing for low-income and moderate-income persons, particularly first-time homebuyers, through the use of public financing as provided by the Nebraska Investment Finance Authority Act at reasonable interest rates and by coordinating and cooperating with private industry and local communities which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(b) Encourage the investment of private capital to provide financing for farmers, particularly beginning farmers, and other agricultural enterprises of usual and customary size for such farming operations within the community at interest rates lower than those available in conventional farm credit markets which is essential to alleviating the conditions described in section 58-202 and is in the public interest;

(c) Encourage the investment of private capital and stimulate the creation of basic economic activity, the creation of jobs, the provision of adequate health care, and the expansion of the tax base throughout the state through the use of public financing and by coordinating with private industry and local communities which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(d) Encourage the investment of private capital and assist in the construction, development, rehabilitation, and improvement of wastewater treatment facilities and safe drinking water facilities in this state to provide for clean water to protect the health and welfare of the citizens and residents of this state and promote economic well-being which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(e) Encourage the investment of private capital and assist schools through the use of public financing in the abatement of environmental hazards and the reduction and elimination of accessibility barriers in their school buildings or on their school grounds in order to protect the health and welfare of the citizens and residents of this state and promote economic well-being which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(f) Encourage the investment of private capital and assist in financing the construction and operation of new solid waste disposal areas and facilities and the closure, monitoring, and remediation of former and existing solid waste disposal areas and facilities;

(g) Encourage the investment of private capital and stimulate the construction and operation of any public safety communication project through the use of public financing as provided by the act at reasonable interest rates which is essential to addressing the needs described in section 58-202 and is in the public interest; and

(h) Encourage cooperation with public agencies and the use of entrepreneurial methods and approaches to better access federal, state, and local government resources and to stimulate more private sector initiatives and joint public-private initiatives to carry out the purposes of the Nebraska Investment Finance Authority Act.

(2) Alleviating the conditions and problems enumerated in section 58-202 through encouragement of private investment by a quasi-governmental body is a public purpose and use for which public money provided by the sale of bonds may be borrowed, expended, advanced, loaned, or granted. Such activities shall not be conducted for profit. Such activities are proper governmental functions and can best be accomplished by the creation of a quasi-governmental body vested with the powers and duties specified in the Nebraska Investment Finance Authority Act. The necessity for the provisions of the act to protect the health, safety, morals, and general welfare of all the people of this state is hereby declared to be a matter of legislative determination. The quasi-governmental body created by the act shall make financing available for new or

existing housing to serve those people, particularly first-time homebuyers, whom private industry is unable to serve at current interest rates, shall make financing available for farmers, particularly beginning farmers, shall make financing available for the construction, development, rehabilitation, and improvement of wastewater treatment facilities or safe drinking water facilities and for the construction, operation, closure, monitoring, and remediation of solid waste disposal areas and facilities in this state, shall make financing available to schools for the abatement of environmental hazards and the reduction and elimination of accessibility barriers, and shall make financing available for public safety communication projects in this state.

**Source:** Laws 1983, LB 626, § 3; Laws 1989, LB 311, § 3; Laws 1991, LB 253, § 3; Laws 1992, LB 1001, § 4; Laws 1992, LB 1257, § 68; Laws 1996, LB 1322, § 3; Laws 2002, LB 1211, § 5; Laws 2006, LB 693, § 3.

**58-204 Finance and development entities; legislative findings.**

The Legislature finds that the Nebraska Mortgage Finance Fund, the Nebraska Development Finance Fund, and the Agricultural Development Corporation have effectuated their respective public purposes.

**Source:** Laws 1983, LB 626, § 4; Laws 1991, LB 253, § 4.

**58-205 Consolidation of various finance and development entities; legislative findings.**

The Legislature further finds that the use of a single staff by the Nebraska Mortgage Finance Fund, the Nebraska Development Finance Fund, and the Agricultural Development Corporation has proven to be very efficient and that it would promote an even more efficient operation of the activities of such entities if they were consolidated into a single entity with a single governing body.

**Source:** Laws 1983, LB 626, § 5; Laws 1991, LB 253, § 5.

**58-206 Assistance and expertise; provided by single finance and development entity; legislative findings.**

The Legislature further finds that:

(1) In many instances local communities, citizens of the state, and private enterprise lack the knowledge and technical expertise necessary to take advantage of the public purpose financings offered by the Nebraska Mortgage Finance Fund, the Nebraska Development Finance Fund, the Agricultural Development Corporation, and local industrial development revenue bond options, resulting in less than full realization of the public purpose benefits of such financings to the state and its citizens;

(2) It is in the interest of the state and its citizens, as well as local communities, to provide assistance and expertise to enable local communities, citizens, and private enterprise to more fully realize the benefits available to the general public; and

(3) Such assistance and expertise can be provided by a single quasi-governmental entity with a professional staff.

**Source:** Laws 1983, LB 626, § 6; Laws 1991, LB 253, § 6.

**58-207 Definitions, where found.**

For purposes of the Nebraska Investment Finance Authority Act, unless the context otherwise requires, the definitions found in sections 58-207.01 to 58-225 shall be used.

**Source:** Laws 1983, LB 626, § 7; Laws 1984, LB 1084, § 3; Laws 1989, LB 706, § 3; Laws 1991, LB 253, § 7; Laws 1992, LB 1001, § 5; Laws 1996, LB 1322, § 4; Laws 2006, LB 693, § 4.

**58-207.01 Abatement, defined.**

Abatement shall include, but not be limited to, any (1) inspection and testing regarding environmental hazards, (2) maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate environmental hazards, (3) removal or encapsulation of environmentally hazardous material or property, (4) restoration or replacement of material or property, (5) related architectural and engineering services, and (6) other action to reduce or eliminate environmental hazards in the school buildings or grounds under the school's control. Abatement shall not include the encapsulation of any material containing more than one percent friable asbestos.

**Source:** Laws 1989, LB 706, § 4; Laws 1991, LB 253, § 8; Laws 1992, LB 1001, § 6.

**58-207.02 Accessibility barrier, defined.**

Accessibility barrier shall mean anything which impedes entry into, exit from, or use of any building or facility by all people.

**Source:** Laws 1992, LB 1001, § 7.

**58-207.03 Accessibility barrier elimination, defined.**

Accessibility barrier elimination shall include, but not be limited to, inspection for and removal of accessibility barriers, maintenance to reduce, lessen, put an end to, diminish, control, dispose of, or eliminate accessibility barriers, related restoration or replacement of facilities or property, any related architectural and engineering services, and any other action to reduce or eliminate accessibility barriers in the school buildings or on the school grounds under the control of the school board. Accessibility barrier elimination project costs shall include, but not be limited to, inspection, maintenance, accounting, emergency services, consultation, or any other action to reduce or eliminate accessibility barriers.

**Source:** Laws 1992, LB 1001, § 8.

**58-208 Agriculture or agricultural enterprise, defined.**

Agriculture or agricultural enterprise shall mean the real and personal property constituting farms and ranches.

**Source:** Laws 1983, LB 626, § 8; Laws 1991, LB 253, § 9.

**58-209 Authority, defined.**

Authority shall mean the Nebraska Investment Finance Authority.

**Source:** Laws 1983, LB 626, § 9; Laws 1991, LB 253, § 10.

**58-209.01 Blighted area, defined.**

Blighted area shall mean an area within a city or village (1) which by reason of the presence of a substantial number of deteriorated or deteriorating structures, defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary 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 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 (2) in which there is at least one of the following conditions: (a) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (b) the average age of the residential or commercial units in the area is at least forty years; (c) more than half of the plotted and subdivided property in the area is unimproved land that has been within the city or village for forty years and has remained unimproved during that time; (d) the per capita income of the area is lower than the average per capita income of the municipality in which the area is designated; or (e) the area has had either stable or decreasing population based on the last two decennial censuses. A city of the metropolitan, primary, or first class shall not 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.

**Source:** Laws 1984, LB 1084, § 4; Laws 1991, LB 253, § 11.

**58-210 Bond, defined.**

Bond shall mean any bond, note, debenture, interim certificate, bond anticipation note, or other evidence of financial indebtedness.

**Source:** Laws 1983, LB 626, § 10; Laws 1991, LB 253, § 12.

**58-210.01 Environmental hazard, defined.**

Environmental hazard shall mean any contamination of the air, water, or land surface or subsurface caused by any substance adversely affecting human health or safety, if such substance has been declared hazardous by a federal or state statute, rule, or regulation.

**Source:** Laws 1989, LB 706, § 5; Laws 1991, LB 253, § 13.

**58-210.02 Economic-impact project, defined.**

(1) Economic-impact project means any of the following, whether or not in existence, financed in whole or in part through the use of the federal new markets tax credit described in section 45D of the Internal Revenue Code, and located in a low-income community designated pursuant to section 45D of the Internal Revenue Code or designated by the Department of Economic Development:

(a) Any land, building, or other improvement, including, but not limited to, infrastructure;

- (b) Any real or personal property;
  - (c) Any equipment; and
  - (d) Any undivided or other interest in any property described in subdivision (a), (b), or (c) of this subsection.
- (2) Economic-impact project does not include any operating capital.

**Source:** Laws 2006, LB 693, § 5.

**58-211 Financing agreement, defined.**

Financing agreement shall mean any contractual obligation between the authority and another entity with respect to the financing which shall include without limitation refinancing of a project or projects and shall include without limitation a lease agreement, loan agreement, sale contract, take-or-pay contract, or user agreement. The financing agreement shall provide for payments by such other entity to the authority in such amounts that the authority shall be able to pay on a timely basis interest on the bonds issued in connection with such agreement, the principal of such bonds, and any redemption prices or premiums with respect thereto. The financing agreement may provide that the obligation to make such payments shall be secured or evidenced in such manner as the authority deems appropriate to provide adequate security for the authority and the holders of the bonds issued in connection with such agreements. The financing agreement shall also contain provisions with respect to the acquisition, construction, rehabilitation, improvement, or refinancing of a project to effectuate the public purposes of the Nebraska Investment Finance Authority Act and provide that the agreement is not subject to assumption except under such circumstances as the authority determines are consistent with the public purposes to be carried out.

**Source:** Laws 1983, LB 626, § 11; Laws 1991, LB 253, § 14.

**58-211.01 First-time homebuyer, defined.**

First-time homebuyer shall mean a low-income or moderate-income person who has had no present ownership interest in his or her principal residence at any time during the three-year period ending on the date a mortgage loan financed by the authority is received.

**Source:** Laws 1991, LB 253, § 15.

**58-212 Hospital or nursing home, defined.**

Hospital or nursing home shall mean (1) any private nonprofit hospital, nonprofit nursing home, corporation, association, or institution, (2) any public hospital, public nursing home, or institution authorized by law to provide or operate health facilities in this state, and (3) any cooperative hospital service organization which is described in section 501(c) of the Internal Revenue Code or any similar nonprofit corporation, whether or not such corporation is exempt from federal income taxation pursuant to section 501(e) of the Internal Revenue Code.

**Source:** Laws 1983, LB 626, § 12; Laws 1991, LB 253, § 16; Laws 1995, LB 574, § 54.

**58-213 Insurer, defined.**

Insurer shall mean (1) an agency, department, administration, or instrumentality, corporate or otherwise, of or in the United States Department of Housing and Urban Development, the Farmers Home Administration of the United States Department of Agriculture, or the United States Department of Veterans Affairs, (2) any private insurance company, or (3) any other public or private agency which insures or guarantees loans, including mortgage loans.

**Source:** Laws 1983, LB 626, § 13; Laws 1991, LB 2, § 9; Laws 1991, LB 253, § 17.

**58-214 Lender, defined.**

Lender shall mean (1) any federally chartered or state-chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, or small business investment company, (2) the Wastewater Treatment Facilities Construction Loan Fund, or (3) any other institution or fund qualified within the state to originate or service loans, including, but not limited to, insurance companies, credit unions, and mortgage loan companies.

**Source:** Laws 1983, LB 626, § 14; Laws 1989, LB 311, § 4; Laws 1991, LB 253, § 18.

**58-215 Loan, defined.**

Loan shall mean any lending arrangement pursuant to a financing agreement.

**Source:** Laws 1983, LB 626, § 15.

**58-216 Low-income or moderate-income person, defined.**

Low-income or moderate-income person shall mean any person irrespective of race, religion, creed, national origin, or sex determined by the authority to be eligible for such assistance as is made available by the Nebraska Investment Finance Authority Act on account of insufficient personal or family income, taking into consideration without limiting the generality thereof such factors as:

- (1) The amount of income of such person available for housing needs;
- (2) Size of family;
- (3) Cost and condition of housing available;
- (4) Whether such person is elderly, infirm, or disabled;
- (5) The ability of such person to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, safe, and uncrowded housing; and
- (6) Existing federal guidelines or standards for determining low income and moderate income.

**Source:** Laws 1983, LB 626, § 16; Laws 1991, LB 253, § 19.

**58-216.01 Microenterprise, defined.**

Microenterprise shall mean any business, whether new or existing, with less than ten employees, less than twenty-five thousand dollars of net assets, and less than one hundred thousand dollars of annual sales.

**Source:** Laws 1996, LB 1322, § 5.



**58-217 Mortgage, defined.**

Mortgage shall mean a mortgage deed, deed of trust, or other instrument securing a mortgage loan and constituting a lien on real property held in fee simple or on a leasehold under a lease having a remaining term at the time such mortgage is acquired of not less than the term for repayment of the mortgage loan secured by such mortgage which is improved by residential housing.

**Source:** Laws 1983, LB 626, § 17; Laws 1991, LB 253, § 20.

**58-218 Mortgage loan, defined.**

Mortgage loan shall mean an interest-bearing obligation which may be secured by a mortgage or such other security as the authority deems appropriate.

**Source:** Laws 1983, LB 626, § 18; Laws 1991, LB 253, § 21.

**58-219 Project, defined.**

Project shall mean one or more of the following:

- (1)(a) Rental housing;
- (b) Residential housing; and
- (c) Residential energy conservation devices;
- (2) Agriculture or agricultural enterprise;

(3) Any land, building, or other improvement, any real or personal property, or any equipment and any undivided or other interest in any of the foregoing, whether or not in existence, suitable or used for or in connection with any of the following revenue-producing enterprises or two or more such enterprises engaged or to be engaged in:

(a) In all areas of the state, manufacturing or industrial enterprises, including assembling, fabricating, mixing, processing, warehousing, distributing, or transporting any products of agriculture, forestry, mining, industry, or manufacturing; pollution control facilities; and facilities incidental to the development of industrial sites, including land costs and the costs of site improvements such as drainage, water, storm, and sanitary sewers, grading, streets, and other facilities and structures incidental to the use of such sites for manufacturing or industrial enterprises;

(b) In all areas of the state, service enterprises if (i) such facilities constitute new construction or rehabilitation, including hotels or motels, sports and recreation facilities available for use by members of the general public either as participants or spectators, and convention or trade show facilities, (ii) such facilities do not or will not derive a significant portion of their gross receipts from retail sales or utilize a significant portion of their total area for retail sales, and (iii) such facilities are owned or to be owned by a nonprofit entity;

(c) In blighted areas of the state, service and business enterprises if such facilities constitute new construction, acquisition, or rehabilitation, including, but not limited to, those enterprises specified in subdivision (3)(b) of this section, office buildings, and retail businesses if such facilities are owned or to be owned by a nonprofit entity; and

(d) In all areas of the state, any land, building, or other improvement and all real or personal property, including furniture and equipment, and any undivided

ed or other interest in any such property, whether or not in existence, suitable or used for or in connection with any hospital, nursing home, and facilities related and subordinate thereto.

Nothing in this subdivision shall be construed to include any rental or residential housing, residential energy conservation device, or agriculture or agricultural enterprise;

(4) Any land, building, or other improvement, any real or personal property, or any equipment and any undivided or other interest in any of the foregoing, whether or not in existence, used by a nonprofit entity as an office building, but only if (a) the principal long-term occupant or occupants thereof initially employ at least fifty people, (b) the office building will be used by the principal long-term occupant or occupants as a national, regional, or divisional office, (c) the principal long-term occupant or occupants are engaged in a multistate operation, and (d) the authority makes the findings specified in subdivision (1) of section 58-251;

(5) Wastewater treatment or safe drinking water project which shall include any project or undertaking which involves the construction, development, rehabilitation, and improvement of wastewater treatment facilities or safe drinking water facilities and is financed by a loan from or otherwise provided financial assistance by the Wastewater Treatment Facilities Construction Loan Fund or any comparable state fund providing money for the financing of safe drinking water facilities;

(6) Any cost necessary for abatement of an environmental hazard or hazards in school buildings or on school grounds upon a determination by the school that an actual or potential environmental hazard exists in the school buildings or on the school grounds under its control;

(7) Any accessibility barrier elimination project costs necessary for accessibility barrier elimination in school buildings or on school grounds upon a determination by the school that an actual or potential accessibility barrier exists in the school buildings or on the school grounds under its control;

(8) Solid waste disposal project which shall include land, buildings, equipment, and improvements consisting of all or part of an area or a facility for the disposal of solid waste, including recycling of waste materials, either publicly or privately owned or operated, and any project or program undertaken by a county, city, village, or entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act for closure, monitoring, or remediation of an existing solid waste disposal area or facility and any undivided or other interest in any of the foregoing;

(9) Any affordable housing infrastructure which shall include streets, sewers, storm drains, water, electrical and other utilities, sidewalks, public parks, public playgrounds, public swimming pools, public recreational facilities, and other community facilities, easements, and similar use rights thereof, as well as improvements preparatory to the development of housing units;

(10) Any public safety communication project, including land, buildings, equipment, easements, licenses, and leasehold interests, and any undivided or other interest in any of the foregoing, held for or on behalf of any public safety communication system owned or operated by (a) a joint entity providing public safety communications and created pursuant to the Interlocal Cooperation Act or (b) a joint public agency providing public safety communications and created pursuant to the Joint Public Agency Act; and

(11) Economic-impact projects.

**Source:** Laws 1983, LB 626, § 19; Laws 1984, LB 372, § 10; Laws 1984, LB 1084, § 5; Laws 1989, LB 311, § 5; Laws 1989, LB 706, § 7; Laws 1991, LB 253, § 22; Laws 1992, LB 1001, § 9; Laws 1992, LB 1257, § 69; Laws 1996, LB 1322, § 6; Laws 1999, LB 87, § 78; Laws 2002, LB 1211, § 6; Laws 2006, LB 693, § 6.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**58-219.01 Public agency, defined.**

Public agency means any:

(1) County, city, or village; school, drainage, tax, improvement, or other district; local or regional housing agency; department, division, or political subdivision of this state or another state; housing agency or housing trust of this state or another state; and other agency, bureau, office, authority, or instrumentality of this state or another state;

(2) Board, agency, commission, division, or other instrumentality of a city, village, or county; and

(3) Board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit thereof, and in each case, any affiliates thereof.

**Source:** Laws 2006, LB 693, § 7.

**58-220 Rental housing, defined.**

Rental housing shall mean a specific work or improvement within this state undertaken primarily to provide rental dwelling accommodations for low-income or moderate-income persons, which work or improvement shall include the acquisition, construction, reconstruction, or rehabilitation of land, buildings, and improvements thereto and such other nonhousing facilities as may be incidental or appurtenant thereto.

**Source:** Laws 1983, LB 626, § 20; Laws 1991, LB 253, § 23.

**58-221 Residential energy conservation device, defined.**

Residential energy conservation device shall mean any prudent means of reducing the demands for conventional fuels or increasing the supply or efficiency of these fuels in residential housing and shall include, but not be limited to:

(1) Caulking and weather stripping of doors and windows;

(2) Furnace efficiency modifications, including:

(a) Replacement burners, furnaces, heat pumps, or boilers or any combination thereof which, as determined by the Director of Environment and Energy, substantially increases the energy efficiency of the heating system;

(b) Any device for modifying flue openings which will increase the energy efficiency of the heating system; and

(c) Any electrical or mechanical furnace ignition system which replaces a standing gas pilot light;

- (3) A clock thermostat;
- (4) Ceiling, attic, wall, and floor insulation;
- (5) Water heater insulation;
- (6) Storm windows and doors, multiglazed windows and doors, and heat-absorbed or heat-reflective glazed window and door materials;
- (7) Any device which controls demand of appliances and aids load management;
- (8) Any device to utilize solar energy, biomass, or wind power for any residential energy conservation purpose including heating of water and space heating or cooling; and
- (9) Any other conservation device, renewable energy technology, and specific home improvement necessary to insure the effectiveness of the energy conservation measures as the Director of Environment and Energy by rule or regulation identifies.

**Source:** Laws 1983, LB 626, § 21; Laws 1991, LB 253, § 24; Laws 2019, LB302, § 64.

**58-222 Residential housing, defined.**

Residential housing shall mean a specific work or improvement within this state undertaken primarily to provide single-family dwelling accommodations for low-income and moderate-income persons, which work or improvement shall include the acquisition, construction, reconstruction, or rehabilitation of land, buildings, and improvements thereto and such other nonhousing facilities as may be incidental or appurtenant thereto, including residential energy conservation devices.

**Source:** Laws 1983, LB 626, § 22; Laws 1991, LB 253, § 25.

**58-223 Residential energy conservation loan program, defined.**

Residential energy conservation loan program shall mean a system by which loans and mortgage loans for residential energy conservation devices are made to low-income and moderate-income persons pursuant to the Nebraska Investment Finance Authority Act.

**Source:** Laws 1983, LB 626, § 23; Laws 1991, LB 253, § 26.

**58-223.01 School, defined.**

School shall mean (1) any school board or school district and (2) any private for-profit or not-for-profit institution, the primary purpose of which is to provide educational instruction if such institution is available for attendance by members of the general public.

**Source:** Laws 1989, LB 706, § 6; Laws 1991, LB 253, § 27.

**58-224 State, defined.**

State shall mean the State of Nebraska.

**Source:** Laws 1983, LB 626, § 24.

**58-225 Utility, defined.**

Utility shall mean an entity which provides electricity or natural gas to retail customers in the state.

**Source:** Laws 1983, LB 626, § 25; Laws 1991, LB 253, § 28.

**58-226 Nebraska Investment Finance Authority; created; members; qualifications.**

(1) There is hereby created a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions, to be known as the Nebraska Investment Finance Authority. The authority shall have the powers and duties set forth in the Nebraska Investment Finance Authority Act.

(2) The authority shall be composed of nine members as follows:

(a) The Director of Agriculture, the Director of Economic Development, and the chairperson of the Nebraska Investment Council who shall be ex officio members; and

(b) Six public members who shall be appointed by the Governor as follows:

(i) One member shall be experienced in real estate development;

(ii) One member shall be experienced in industrial mortgage credit, commercial credit, agricultural credit, or housing mortgage credit;

(iii) One member shall be experienced in banking or investment banking;

(iv) One member shall be experienced in home building or shall be a licensed real estate broker;

(v) One member shall be experienced in agricultural production; and

(vi) One member shall be appointed at large.

(3) All members shall be residents of the state. Of the public members, two members shall be appointed from each congressional district. Of the six public members, not more than three shall belong to the same political party. The three ex officio members may each designate a representative to perform their respective duties under the act. It shall not constitute a conflict of interest for members of the authority to serve on any other public board or commission.

**Source:** Laws 1983, LB 626, § 26; Laws 1991, LB 253, § 29.

**58-227 Authority; public members; terms; vacancies; removal.**

Of the six public members first appointed to the authority, three shall be appointed to terms of office expiring on January 15, 1985, and the remaining three to terms of office expiring on January 15, 1987. All subsequent appointments shall be for terms of four years. Vacancies in the public membership of the authority shall be filled for the unexpired term by appointment by the Governor. Each member shall hold office for the term of his or her appointment and until his or her successor shall have been appointed and qualified. Any public member shall be eligible for reappointment. Any public member may be removed from office for incompetency, neglect of duty, or malfeasance in office by the Governor or by an affirmative vote by any six members of the authority.

**Source:** Laws 1983, LB 626, § 27.

**58-228 Authority; chairperson; officers; expenses.**

The Director of Economic Development shall be the chairperson of the authority. The members shall elect from among the membership a vice-chairperson and such other officers as they may determine. Members shall receive no compensation for their services but shall be reimbursed for expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1983, LB 626, § 28; Laws 1991, LB 253, § 30; Laws 2020, LB381, § 51.

**58-229 Authority; quorum; vacancy; effect.**

The powers of the authority shall be vested in the members. Five members of the authority shall constitute a quorum. The affirmative vote of at least five members shall be necessary for any action to be taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

**Source:** Laws 1983, LB 626, § 29; Laws 1991, LB 253, § 31.

**58-230 Meetings; when held; virtual conferencing authorized.**

Meetings of the members of the authority shall be held at least once every three months to attend to the business of the authority and may be held at the call of the chairperson or whenever any five members so request. Such meetings shall at all times be subject to the Open Meetings Act, and such meetings may be held by means of virtual conferencing in accordance with subsection (2) of section 84-1411.

**Source:** Laws 1983, LB 626, § 30; Laws 1991, LB 253, § 32; Laws 1996, LB 1322, § 7; Laws 2004, LB 821, § 14; Laws 2021, LB83, § 6.  
Effective date April 22, 2021.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**58-231 Executive director; powers and duties.**

The members of the authority shall appoint an executive director who shall be an employee but not a member of the authority and who shall serve at the pleasure of the members and receive compensation fixed by the members. The executive director shall serve as the ex officio secretary of the authority, shall administer, manage, and direct the affairs and activities of the authority in accordance with the policies and under the control and direction of the members, and shall approve all accounts for salaries, allowable expenses of the authority or of any employee or consultant thereof, and expenses incidental to the operation of the authority. The executive director may, to the extent he or she deems it advisable, establish such divisions within the authority as necessary to carry out the public purposes of the authority. He or she shall perform such other duties as may be directed by the members in carrying out the purposes of the Nebraska Investment Finance Authority Act.

**Source:** Laws 1983, LB 626, § 31; Laws 1991, LB 253, § 33.

**58-232 Executive director; meetings; records; duties.**

The executive director shall attend the meetings of the members of the authority, keep a record of the proceedings of the authority, and maintain and

be custodian of all books, documents, and papers filed with the authority, of the minute book or journal of the authority, and of its official seal. The executive director may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

**Source:** Laws 1983, LB 626, § 32; Laws 1991, LB 253, § 34.

**58-233 Repealed. Laws 1991, LB 253, § 69.**

**58-234 Authority; personnel.**

The authority may employ legal counsel, technical experts, and such other officers, agents, and employees, permanent or temporary, as it deems necessary to carry out the efficient operation of the authority and shall determine qualifications, duties, compensation, and terms of office. The members may delegate to one or more agents or employees of the authority such administrative duties as they deem proper.

**Source:** Laws 1983, LB 626, § 34; Laws 1991, LB 253, § 35.

**58-235 Authority; member or employee; conflict of interest; disclosure.**

Any member or employee of the authority who has, will have, or later acquires any direct or indirect interest in any transaction with the authority shall immediately disclose the nature and extent of such interest in writing to the authority as soon as he or she has knowledge of such interest. Such disclosure shall be entered upon the minutes of the authority. Upon such disclosure such member or employee shall not participate in any action by the authority authorizing such transaction. Actions taken when such member or employee reasonably believed that he or she had no conflict shall not be invalidated because of such conflict. The fact that a member is also an officer or owner of an organization shall not be deemed to be a direct or indirect interest unless (1) such member has an ownership interest of greater than five percent in such organization or (2) the transaction in question does not involve all similar organizations but involves only the authority and such organization.

**Source:** Laws 1983, LB 626, § 35; Laws 1991, LB 253, § 36.

**58-236 Officer or employee of state; membership on or service to authority; how treated.**

Notwithstanding any other law, no officer or employee of this state shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of acceptance of membership in the authority or of providing services to such authority.

**Source:** Laws 1983, LB 626, § 36; Laws 1991, LB 253, § 37.

**58-237 Authority; members; executive director; surety bond.**

Before the issuance of any bonds under the Nebraska Investment Finance Authority Act, each member of the authority shall execute a surety bond in the penal sum of twenty-five thousand dollars. The executive director of the authority shall execute a surety bond in the penal sum of fifty thousand dollars. To the extent that any member of the authority or the executive director of the authority is already covered by a bond required by state law, such member or

the executive director need not obtain another bond so long as the bond required by state law is in at least the penal sum specified in this section and covers the member's or executive director's activities for the authority. In lieu of such bonds the chairperson of the authority may execute a blanket surety bond covering each member, the executive director, and the employees or other officers of the authority. Each surety bond shall be conditioned upon the faithful performance of the duties of the office of the member or executive director and shall be issued by a surety company authorized to transact business in the state as surety. At all times after the issuance of any surety bonds, each member and executive director shall maintain such surety bonds in full force and effect. All costs of the surety bonds shall be paid by the authority.

**Source:** Laws 1983, LB 626, § 37; Laws 1991, LB 253, § 38.

**58-238 Authority; members; liability.**

Members of the authority shall not be liable to the state, the authority, or any other person as a result of their activities, whether ministerial or discretionary, as authority members, except for willful dishonesty or intentional violations of law. Members of the authority and any person executing bonds or policies of insurance shall not be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof. The authority may purchase liability insurance for members, officers, and employees and may indemnify any authority member to the same extent that a school district may indemnify a school board member pursuant to section 79-516.

**Source:** Laws 1983, LB 626, § 38; Laws 1991, LB 253, § 39; Laws 1996, LB 900, § 1054.

**58-239 Authority; powers; enumerated.**

The authority is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes including:

(1) To have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(2) To adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with the Nebraska Investment Finance Authority Act, to regulate its affairs, to carry into effect the powers and purposes of the authority, and to conduct its business;

(3) To sue and be sued in its own name;

(4) To have an official seal and alter it at will;

(5) To maintain an office at such place or places within the state as it may designate;

(6) To make and execute contracts and all other instruments as necessary or convenient for the performance of its duties and the exercise of its powers and functions under the act;

(7) To employ architects, engineers, attorneys, inspectors, accountants, building contractors, financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation;

(8) To obtain insurance against any loss in connection with its bonds, property, and other assets in such amounts and from such insurers as it deems advisable;



- (9) To borrow money and issue bonds as provided by the act;
- (10) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the act subject to the conditions upon which the grants or contributions are made including gifts or grants from any department, agency, or instrumentality of the United States, and to make grants, for any purpose consistent with the act;
- (11) To enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders for the purpose of carrying out projects authorized under the act;
- (12) To enter into contracts or agreements with lenders for the servicing and processing of mortgages or loans pursuant to the act;
- (13) To provide technical assistance to local public bodies and to for-profit and nonprofit entities in the areas of housing for low-income and moderate-income persons, agricultural enterprises, and community or economic development, to distribute data and information concerning the needs of the state in these areas, and, at the discretion of the authority, to charge reasonable fees for such assistance;
- (14) To the extent permitted under its contract with the holders of bonds of the authority, to consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest or any other term of any contract, loan, loan note, loan note commitment, mortgage, mortgage loan, mortgage loan commitment, lease, or agreement of any kind to which the authority is a party;
- (15) To the extent permitted under its contract with the holders of bonds of the authority, to enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of the state, the reduction can be made without jeopardizing the economic stability of the project being financed;
- (16) To acquire by construction, purchase, devise, gift, or lease or any one or more of such methods one or more projects located within this state, except that the authority shall not acquire any projects or parts of such projects by condemnation;
- (17) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the authority may deem advisable and as are not in conflict with the act;
- (18) To issue bonds for the purpose of paying the cost of financing any project or projects and to secure the payment of such bonds as provided in the act;
- (19) To sell and convey any real or personal property and make such order respecting the same as it deems conducive to the best interest of the authority;
- (20) To make and undertake commitments to make loans to lenders under the terms and conditions requiring the proceeds of the loans to be used by such lenders to make loans for projects. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker, or other financial institution authorized to transact business in the state;

(21) To hold and dispose of any real or personal property, whether tangible or intangible, and any distributions thereon, transferred to or received by the authority as collateral or in payment of amounts due the authority or otherwise pursuant to state law, in accordance with the act;

(22) To invest in, purchase, make commitments to invest in or purchase, and take assignments or make commitments to take assignments of loans made by lenders for the construction, rehabilitation, or purchase of projects;

(23) To enter into financing agreements with others with respect to projects to provide financing for such projects upon such terms and conditions as the authority deems advisable to effectuate the public purposes of the act, which projects shall be located within the state. The authority shall not operate any project referred to in this section as a business or in any manner except as the lessor or seller of such project;

(24) To enter into financing agreements with any corporation, partnership, limited liability company, or individual or with any county, city, village, or entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act for purposes of financing any solid waste disposal project;

(25) To enter into agreements with or purchase or guaranty obligations of political subdivisions of the state, including authorities, agencies, commissions, districts, and instrumentalities thereof, to provide financing for affordable housing infrastructure; and

(26) In lieu of providing direct financing as authorized by the Nebraska Investment Finance Authority Act, to guaranty debt obligations of any project owner to whom, and for such purposes as, the authority could otherwise provide direct financing, and the authority may establish a fund or account and limit its obligation on such guaranties to money in such fund or account. Any such guaranty shall contain a statement similar to that required by section 58-255 for bonds issued by the authority.

**Source:** Laws 1983, LB 626, § 39; Laws 1986, LB 1230, § 30; Laws 1991, LB 253, § 40; Laws 1992, LB 1257, § 70; Laws 1993, LB 121, § 355; Laws 1993, LB 364, § 21; Laws 1996, LB 1322, § 8; Laws 1999, LB 87, § 79; Laws 2001, LB 300, § 8.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

#### **58-239.01 Authority; microenterprises; powers and duties.**

(1) In addition to the powers granted to the authority under section 58-239, the authority may:

(a) Guaranty all or part of loans to microenterprises, establish and fund any such fund or account as it deems appropriate, and if it deems appropriate limit its guaranty obligation to money in such fund or account;

(b) Borrow money and issue bonds for the purpose of making guaranties of loans to microenterprises or any program of making such guaranties; and

(c) Enforce any and all rights it may have pursuant to such guaranties.

(2) Prior to exercising any of the powers granted by subsection (1) of this section, the authority shall adopt program eligibility guidelines:

(a) Specifying the type and amount of loans that may be guaranteed and the security or collateral, if any, to be provided by the microenterprise;

(b) Designed to avoid competing with private financial institutions to the extent private financial institutions are making such guaranties on reasonably favorable terms;

(c) Insuring that the public purposes specified in section 58-202, particularly subsection (4) of section 58-202, and subdivision (1)(c) of section 58-203 are effectuated and specifically addressing the effect on the economic and tax base of the state, tax revenue, and employment opportunities; and

(d) Addressing any other matters related to the exercise of the authority's powers under subsection (1) of this section.

**Source:** Laws 1996, LB 1322, § 9.

**58-239.02 Authority; wastewater treatment and safe drinking water projects; powers and duties.**

(1) In addition to the powers granted to the authority under section 58-239, the authority may:

(a) Borrow money and issue bonds for the purpose of financing wastewater treatment and safe drinking water projects; and

(b) Make and undertake commitments to deposit the proceeds from the issuance of bonds in the Wastewater Treatment Facilities Construction Loan Fund to be used to make loans for wastewater treatment projects or in such fund or any comparable state fund established with respect to financing safe drinking water facilities to be used to make loans for safe drinking water projects. Loans made through the Wastewater Treatment Facilities Construction Loan Fund for wastewater treatment facilities shall be originated and serviced pursuant to the Wastewater Treatment Facilities Construction Assistance Act. Loans made through a fund for safe drinking water facilities shall be originated and serviced pursuant to the law creating such fund.

(2) Upon the issuance of bonds for aiding the financing of wastewater treatment projects or safe drinking water projects and at the earliest time that bond proceeds become available, the authority shall transfer the proceeds, less the cost of the issuance and financing of such bond issues and the debt service reserve fund, if any, to the Wastewater Treatment Facilities Construction Loan Fund for wastewater treatment projects or to the appropriate state fund established to finance safe drinking water projects for safe drinking water projects.

**Source:** Laws 1989, LB 311, § 6; Laws 1996, LB 1322, § 10.

**Cross References**

**Wastewater Treatment Facilities Construction Assistance Act**, see section 81-15,147.

**58-239.03 Authority; public safety communication projects; powers.**

In addition to the powers granted under section 58-239, the authority may:

(1) Borrow money and issue bonds for the purpose of financing public safety communication projects; and

(2) Enter into financing agreements for a public safety communication project with a joint entity created pursuant to the Interlocal Cooperation Act or a joint public agency created pursuant to the Joint Public Agency Act.

**Source:** Laws 2002, LB 1211, § 7.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

**58-239.04 Authority; economic-impact projects; powers and duties.**

(1) In addition to the powers granted under section 58-239, the authority may:

(a) Borrow money and issue bonds for the purpose of financing economic-impact projects;

(b) Enter into and perform interagency and intergovernmental agreements with one or more public agencies in connection with financing or providing resources for economic-impact projects;

(c) Create, operate, manage, invest in, and own entities or other consortia created for the purpose of facilitating economic-impact projects; and

(d) Provide resources for economic-impact projects, in an amount not to exceed ten million dollars per project, including, but not limited to, making loans or providing equity through investment therein or ownership thereof or through other means or agreements.

(2) The authority may exercise any of the powers authorized by this section only after a public hearing has been held detailing the economic-impact project to be assisted and allowing for input from the public. Notice of the public hearing shall be given at least two weeks in advance of the hearing in a newspaper of general circulation within the county affected by the economic-impact project, which notice shall give a general designation of the project and identify where more detailed plans may be reviewed prior to the hearing.

**Source:** Laws 2006, LB 693, § 8.

**58-240 Authority; duties; enumerated.**

The authority shall:

(1) Invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, any obligations of the United States or agencies thereof, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to subsection (1) of section 77-2341, except that any funds pledged to secure a bond issue shall be invested in the manner permitted by the indenture securing such bonds;

(2) Collect fees and charges the authority determines to be reasonable in connection with its loans, advances, insurance, commitments, and servicing;

(3) Cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(4) Sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by the authority; and

(5) Do any act necessary or convenient to the exercise of the powers granted by the Nebraska Investment Finance Authority Act or reasonably implied from such act.

**Source:** Laws 1983, LB 626, § 40; Laws 1989, LB 221, § 3; Laws 1991, LB 253, § 42.

**58-241 Authority; coordinate activities with state.**

In exercising any powers granted in the Nebraska Investment Finance Authority Act, the authority shall coordinate its activities with the policy, program, and planning efforts of the state, particularly the Governor's Policy Research Office and the Department of Economic Development.

**Source:** Laws 1983, LB 626, § 41.

**58-242 Authority; agricultural projects; duties.**

Prior to exercising any of the powers authorized by the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority shall require:

(1) That no loan will be made to any person with a net worth of more than five hundred thousand dollars;

(2) That the lender certify and agree that it will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase loans to provide agricultural enterprises or, if such lender has made a commitment to make loans to provide agricultural enterprises on the basis of a commitment from the authority to purchase such loans, such lender will make such loans and sell the same to the authority within a reasonable period of time;

(3) That the lender certify that the borrower is an individual who is actively engaged in or who will become actively engaged in an agricultural enterprise after he or she receives the loan or that the borrower is a firm, partnership, limited liability company, corporation, or other entity with all owners, partners, members, or stockholders thereof being natural persons who are actively engaged in or who will be actively engaged in an agricultural enterprise after the loan is received;

(4) That the aggregate amount of the loan received by a borrower shall not exceed five hundred seventeen thousand seven hundred dollars, as such amount shall be adjusted for inflation in accordance with section 147(c) of the Internal Revenue Code of 1986, as amended. In computing such amount a loan received by an individual shall be aggregated with those loans received by his or her spouse and minor children and a loan received by a firm, partnership, limited liability company, or corporation shall be aggregated with those loans received by each owner, partner, member, or stockholder thereof; and

(5) That the recipient of the loan be identified in the minutes of the authority prior to or at the time of adoption by the authority of the resolution authorizing the issuance of the bonds which will provide for financing of the loan.

**Source:** Laws 1983, LB 626, § 42; Laws 1991, LB 253, § 43; Laws 1993, LB 121, § 356; Laws 2005, LB 90, § 17; Laws 2015, LB515, § 1.

**58-243 Authority; agricultural projects; powers.**

Prior to exercising any of the powers conferred by the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority may, but need not:

- (1) Require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor;
- (2) Require any type of security that it deems reasonable and necessary; or
- (3) Authorize the reservation of funds by lenders in such amount and subject to such conditions as the authority considers reasonable and necessary.

**Source:** Laws 1983, LB 626, § 43; Laws 1991, LB 253, § 44.

**58-244 Authority; agricultural projects; adopt rules and regulations.**

Prior to exercising any of the powers granted under the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority shall adopt rules and regulations governing its activities authorized under the act, including rules and regulations relating to any or all of the following:

- (1) Procedures for the submission of requests or invitations and proposals for making loans to lenders and the investment in, purchase, assignment, and sale of loans;
- (2) The reinvestment by lenders of the proceeds or an equivalent amount from any loan to lenders or the investment in or purchase by the authority or the assignment or sale of loans to the authority in loans to provide for financing agricultural enterprises;
- (3) The number and location of agricultural projects and other characteristics of agricultural enterprises, including, to the extent reasonably possible, assurance that the agricultural enterprises to be financed by an issue of bonds or series of issues will improve employment conditions or otherwise enhance the welfare of persons in the agricultural sector, as determined by the authority, to be financed directly or indirectly by the authority pursuant to the act;
- (4) Rates, fees, charges, and other terms and conditions of originating or servicing loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;
- (5) The type and amount of collateral or security to be provided to insure repayment of loans made by the authority;
- (6) The type of collateral, payment bonds, performance bonds, or other security to be provided for any construction loans made by a lender;
- (7) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority;
- (8) Standards and requirements for the allocation of available money among lenders and the determination of the maturities, terms, conditions, and interest rates for loans made, purchased, sold, assigned, or committed pursuant to the act;
- (9) Commitment requirements for agricultural financing by lenders involving money provided directly or indirectly by the authority; and
- (10) Any other matters related to the duties or exercise of the authority's powers or duties under the act.

**Source:** Laws 1983, LB 626, § 44; Laws 1991, LB 253, § 45.

**58-245 Agricultural projects; loan; reports required; contents.**

(1) For each loan made, purchased, sold, assigned, or committed for use in agricultural projects as defined in subdivision (2) of section 58-219 pursuant to the provisions of the Nebraska Investment Finance Authority Act, the authority shall prepare an individual written report which includes the following information:

- (a) The name and description of the lender;
- (b) The name of the loan guarantor or loan insurer, when applicable;
- (c) The amount and purpose of the loan;
- (d) A description of the agricultural enterprise for which the loan is to be used, including the county in which the enterprise is located;
- (e) The rate of interest applicable to the loan and the current interest rate in the conventional farm credit market for that locality;
- (f) The maturity date of the loan;
- (g) All conditions attaching to the loan;
- (h) The amount and description of fees associated with servicing and processing the loan;
- (i) Whether the borrower is an individual farmer, a farm partnership, a farm limited liability company, a farm corporation, or another farm entity;
- (j) The age of the borrower or, if the borrower is a farm partnership, a farm limited liability company, a farm corporation, or another farm entity, the ages of all of the owners, partners, or stockholders; and
- (k) A statement of the gross farm sales, total assets, total liabilities, and net worth of each borrower.

(2) The authority shall also prepare, following the close of each fiscal year, a report which summarizes the individual loan reports required by subsection (1) of this section setting forth the following information regarding loans made during the immediately preceding fiscal year:

- (a) The number of loans;
- (b) The average principal amount of such loans;
- (c) The average interest rate savings with respect to such loans;
- (d) The average age of the borrowers;
- (e) The average net worth of the borrowers; and
- (f) A comparison of the items listed in subdivisions (a) through (e) of this subsection to the information included in the summary report for the prior year.

**Source:** Laws 1983, LB 626, § 45; Laws 1991, LB 253, § 46; Laws 1993, LB 121, § 357.

**58-246 Agricultural projects; loan reports; public information; borrower's name omitted.**

The reports required pursuant to section 58-245 shall be public information. No such report shall reveal the name of any individual borrower. The authority shall, following the close of each fiscal year, deliver to the Governor and to the Clerk of the Legislature a set of the individual reporting forms from the preceding year together with the report required pursuant to subsection (2) of

section 58-245. The reporting forms and the report submitted to the Clerk of the Legislature shall be submitted electronically. Any member of the Legislature shall receive an electronic copy of such reports by making a request to the chairperson of the authority.

**Source:** Laws 1983, LB 626, § 46; Laws 1991, LB 253, § 47; Laws 2012, LB782, § 85.

**58-247 Authority; housing projects; powers.**

Prior to exercising any of the powers conferred by the Nebraska Investment Finance Authority Act regarding housing projects as defined in subdivision (1) of section 58-219, the authority may:

- (1) Require that the mortgage or mortgage loan involved be insured by a mortgage insurer;
- (2) Require any type of security that it deems reasonable and necessary; or
- (3) Authorize the reservation of funds by mortgage lenders in such amount and subject to such conditions as the authority considers reasonable and necessary under the act.

**Source:** Laws 1983, LB 626, § 47; Laws 1991, LB 253, § 48.

**58-248 Authority; housing projects; adopt rules and regulations.**

Prior to exercising any of the powers granted under the Nebraska Investment Finance Authority Act regarding housing projects as defined in subdivision (1) of section 58-219, the authority shall adopt rules and regulations governing its activities authorized under the act, including rules and regulations relating to any or all of the following:

- (1) Procedures for the submission of requests or invitations and proposals for making loans to mortgage lenders and the investment in, purchase, assignment, and sale of mortgages or mortgage loans;
- (2) The reinvestment by mortgage lenders of the proceeds or an equivalent amount from any loan to mortgage lenders or the investment in or purchase by the authority or the assignment or sale of mortgages or mortgage loans to the authority in mortgages or mortgage loans to provide residential housing for low-income or moderate-income persons, particularly first-time homebuyers;
- (3) The number of dwelling units, location of the units, and other characteristics of residential housing, including, to the extent reasonably possible, assurance that the residential housing to be financed by an issue of bonds or series of issues will be an adequate mixture of low-income and moderate-income residential housing benefiting particularly first-time homebuyers, as determined by the authority, to be financed directly or indirectly by the authority pursuant to the act;
- (4) Rates, fees, charges, and other terms and conditions of originating or servicing loans, mortgages, or mortgage loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;
- (5) The type and amount of collateral or security to be provided to assure repayment of loans made by the authority;



(6) The type of collateral, payment bonds, performance bonds, or other security to be provided for any mortgage loans made by a mortgage lender for construction loans;

(7) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority;

(8) Standards and requirements for the allocation of available money among mortgage lenders and the determination of the maturities, terms, conditions, and interest rates for loans, mortgages, or mortgage loans made, purchased, sold, assigned, or committed pursuant to the act;

(9) Commitment requirements for residential housing financing for low-income and moderate-income persons by mortgage lenders involving money provided directly or indirectly by the authority;

(10) The procedures, standards, commitment requirements, and other matters necessary to offer an effective residential energy conservation loan program; or

(11) Any other matters related to the duties or exercise of the authority's powers or duties under the act.

**Source:** Laws 1983, LB 626, § 48; Laws 1991, LB 253, § 49.

**58-249 Authority; low-income housing loans; establish funds.**

The purpose of this section is to make loans available for single-family housing to people who due to low income would not otherwise qualify for loans under the normal lending practices of the lender and the authority.

In connection with any issuance of bonds in an aggregate principal amount of fifty million dollars or more for purposes of financing residential housing, the authority shall establish within such bond issue a fund of at least one million dollars to finance mortgages for low-income persons at an interest rate below the interest rate which otherwise applies to mortgages financed from such bond issue.

**Source:** Laws 1983, LB 626, § 49; Laws 1991, LB 253, § 50.

**58-250 Authority; development projects; adopt rules and regulations.**

Prior to exercising any of the powers granted under the Nebraska Investment Finance Authority Act relating to development projects as defined in subdivisions (3) and (5) of section 58-219, the authority shall adopt rules and regulations governing its activities authorized under such act, including rules and regulations relating to any or all of the following:

(1) The type and amount of collateral or security to be provided to insure repayment of loans made by the authority;

(2) The type of collateral, payment bonds, performance bonds, or other security to be provided for any mortgage or loan made for projects;

(3) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority;

(4) Standards and requirements for determination of the maturities, terms, conditions, and interest rates for loans or mortgages made, purchased, sold, assigned, or committed; and

(5) Any other matters related to the duties or exercise of the authority's powers or duties under the act.

**Source:** Laws 1983, LB 626, § 50; Laws 1989, LB 706, § 8; Laws 1991, LB 253, § 51.

**58-251 Authority; development project; make specific findings.**

Prior to providing financing for a development project as defined by subdivision (3) of section 58-219, the authority shall make specific findings relating to the public purposes to be effectuated thereby, including but not limited to (1) with respect to a project as defined in subdivision (3)(a), (3)(b), or (3)(c) of section 58-219, the project's effect on the economic base, the tax base, tax revenue, and employment opportunities, and (2) with respect to a project as defined in subdivision (3)(d) of section 58-219, the project's effect on the provision, including the continued provision, of health care and related services.

**Source:** Laws 1983, LB 626, § 51.

**58-252 Authority; borrow money and issue bonds; purposes.**

The authority may borrow money and issue from time to time its bonds in such principal amounts as the authority determines necessary to provide sufficient funds to carry out its purposes which include:

- (1) Carrying out the additional powers of the Nebraska Investment Finance Authority Act;
- (2) The payment of interest on bonds issued under the act;
- (3) The establishment of reserves to secure the bonds in an amount not to exceed twenty-five percent of the aggregate principal amount of the particular issue of bonds; and
- (4) All other expenditures of the authority incident to and necessary and convenient to carry out its purposes and powers.

**Source:** Laws 1983, LB 626, § 52; Laws 1991, LB 253, § 52.

**58-253 Authority; issue bonds to renew, pay, or refund bonds.**

The authority may issue from time to time bonds to renew or to pay bonds, including the interest on such bonds, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured and whether or not the project as originally financed with the bonds would at the time of the refunding qualify as a project, and may issue bonds partly to refund outstanding bonds and partly for any other of its corporate purposes. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded or exchanged for the bonds to be refunded.

Bonds originally issued by any municipality, county, hospital authority, housing authority, or other political subdivision may be subject to refunding pursuant to this section if the original issuer and beneficiary of the bonds request the authority to issue refunding bonds and the bonds to be refunded financed a project which would at the time of refunding qualify as a project.

**Source:** Laws 1983, LB 626, § 53; Laws 1991, LB 253, § 53; Laws 1992, LB 1257, § 71.

**58-254 Authority; bond issuance; general obligation; how paid and secured.**

Unless otherwise expressly provided by the authority, every issue of its bonds shall be general obligations of the authority payable solely out of any revenue or money of the authority, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be additionally secured by a pledge of any grant or contribution from the federal government or any corporation, association, institution, or person or a pledge of any money, income, or revenue of the authority from any source.

**Source:** Laws 1983, LB 626, § 54; Laws 1991, LB 253, § 54.

**58-255 Authority; bond issuance; state; no obligation; statement.**

No bonds issued by the authority under the Nebraska Investment Finance Authority Act shall constitute a debt, liability, or general obligation of this state or a pledge of the faith and credit of this state but shall be payable solely as provided by section 58-254. Each bond issued under the act shall contain on the face of such bond a statement that neither the faith and credit nor the taxing power of this state is pledged to the payment of the principal of or the interest on such bond.

**Source:** Laws 1983, LB 626, § 55; Laws 1991, LB 253, § 55.

**58-256 Bond resolution; contents; sale; manner; declaratory judgment.**

The authority shall authorize the bonds by a resolution. The bonds shall bear such date or dates and shall mature at such time or times as such resolution provides, except that no bond other than bonds issued to finance rental housing projects or residential housing shall mature more than thirty years from the date of its issue as the resolution provides. In no case shall any bond mature more than fifty years from the date of issue. The bonds shall bear interest at such rate or rates, including variations of such rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption, including redemption prior to maturity, as such resolution provides, except that facsimile signatures of all members of the authority shall be sufficient only if the resolution requires that the trustee for such bond issue manually authenticate each bond and the resolution permits the use of facsimile signatures. The resolution authorizing the bonds may provide that the bonds contain a recital that they are issued under the Nebraska Investment Finance Authority Act, and such recital shall be deemed conclusive evidence of the validity of the bonds and the regularity of the issuance. The provisions of section 10-126 shall not apply to bonds issued by the authority. Bonds of the authority may be sold by the authority at a public or private sale and at such price or prices as the authority shall determine.

The authority may bring an action for declaratory judgment to determine the validity of any issuance or proposed issuance of its bonds under the act and the legality and validity of all proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of such bonds and for the payment of the principal of and interest on such bonds.

**Source:** Laws 1983, LB 626, § 56; Laws 1984, LB 372, § 11; Laws 1991, LB 253, § 56.

**58-257 Bond resolution; provisions enumerated.**

Any resolution authorizing the issuance of bonds may contain provisions, which provisions shall be a part of the contract or contracts with the holders of such bonds, as to:

(1) Pledging all or any part of the revenue of the authority to secure the payment of the bonds, subject to such agreements with bondholders as then exist;

(2) Pledging all or any part of the assets of the authority, including financing agreements, mortgages, and obligations securing the same, to secure the payment of the bonds, subject to such agreements with bondholders as then exist;

(3) The use and disposition of the gross income from financing agreements, mortgages, or loans owned by the authority and payment of the principal of mortgages or loans owned by the authority;

(4) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(5) Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which the consent may be given;

(8) Limitations on the amount of money to be expended by the authority for operating expenses of the authority;

(9) Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the authority may determine and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustees;

(10) Defining the acts or omissions to act which shall constitute a default and the obligations or duties of the authority to the holders of the bonds and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver, except that the rights and remedies shall not be inconsistent with the general laws of this state and other provisions of the Nebraska Investment Finance Authority Act; and

(11) Any other matter of like or different character which in any manner affects the security or protection of the holders of the bonds.

**Source:** Laws 1983, LB 626, § 57; Laws 1991, LB 253, § 57.

**58-258 Authority; pledge; effect; lien; recording; not required.**

Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenue, money, or properties so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of

whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

**Source:** Laws 1983, LB 626, § 58.

**58-259 Authority; purchase bonds of authority; canceled; price.**

Subject to such agreements with bondholders as then exist, the authority may, out of any funds available therefor, purchase bonds of the authority which shall thereupon be canceled at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price then applicable plus accrued interest to the next interest payment on such bonds.

**Source:** Laws 1983, LB 626, § 59; Laws 1991, LB 253, § 58.

**58-260 Bonds; secured by trust indenture; contents; expenses; how treated.**

The bonds may be secured by a trust indenture, which trust indenture may be in the form of a bond resolution or similar contract, by and between the authority and a corporate trustee which may be any financial institution having the power of a trust company or any trust company within or outside the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safekeeping, and application of all money. The authority may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository and for the method of disbursement of such proceeds, with such safeguards and restrictions as the authority may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the authority. If the bonds are secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

**Source:** Laws 1983, LB 626, § 60; Laws 1991, LB 253, § 59.

**58-261 Bonds; negotiable instruments.**

The bonds are hereby made negotiable instruments, whether or not in the form of negotiable instruments, subject only to provisions of the bonds relating to registration.

**Source:** Laws 1983, LB 626, § 61; Laws 1991, LB 253, § 60.

**58-262 Bonds; signatures of prior members or officers; validity.**

In the event that any of the members or officers of the authority cease to be members or officers of the authority prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes as if such members or officers had remained in office until such delivery.

**Source:** Laws 1983, LB 626, § 62; Laws 1991, LB 253, § 61.

**58-263 Authority; establish funds.**

The authority may create and establish any funds as may be necessary or desirable for its purposes.

**Source:** Laws 1983, LB 626, § 63.

**58-264 Authority; money; deposits; secured; expenditures.**

All money of the authority, except as otherwise authorized or provided in the Nebraska Investment Finance Authority Act, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in national banking associations. The money in such accounts shall be paid out on checks signed by the executive director or other officers or employees of the authority as the authority authorizes. All deposits of money shall, if required by the authority, be secured in such a manner as the authority determines to be prudent, and all banks or trust companies may give security for the deposits.

**Source:** Laws 1983, LB 626, § 64; Laws 1991, LB 253, § 62.

**58-265 Authority; bondholders; contract; purposes; money; how secured.**

Notwithstanding the provisions of section 58-264, the authority may contract with the holders of any of its bonds as to the custody, collection, securing, investment, and payment of any money of the authority and of any money held in trust or otherwise for the payment of bonds and may carry out such contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the authority, and all banks and trust companies may give security for the deposits.

**Source:** Laws 1983, LB 626, § 65; Laws 1991, LB 253, § 63.

**58-266 Bondholders; pledge; agreement of the state.**

The state hereby pledges to and agrees with the holder of any bonds issued under the Nebraska Investment Finance Authority Act that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights or remedies of the holders until the bonds, together with the interest on such bonds, with interest on any unpaid installments of interest, and with all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of the bonds.

**Source:** Laws 1983, LB 626, § 66; Laws 1991, LB 253, § 64.

**58-267 Authority; expenses; how paid; liability of state or political subdivision; prohibited.**

All expenses incurred by the authority in carrying out the Nebraska Investment Finance Authority Act shall be payable solely from funds provided under such act, and nothing in such act shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of this state.

**Source:** Laws 1983, LB 626, § 67.

**58-268 Authority; property; public; exempt from taxation; when; dissolution; assets; how distributed.**

All property acquired or held by the authority to carry out the purposes of the Nebraska Investment Finance Authority Act is declared to be public property. The property to the extent such property is used for a public purpose, all the income from such property, bonds issued under such act, interest payable on such bonds, and income derived from such bonds shall at all times be exempt from all taxes imposed by the state or any county, city, or other political subdivision of the state. The authority may, in the resolution authorizing the issuance of any series of bonds, elect to have the income on such bonds be subject to personal income taxation imposed by the state. If the authority is dissolved, the ownership of any assets remaining after all indebtedness and other obligations of the authority have been discharged shall pass to the state. Notwithstanding that title to a project may be in the authority, such project shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such project is leased to or held by private interests.

**Source:** Laws 1983, LB 626, § 68; Laws 1991, LB 253, § 65; Laws 2001, LB 173, § 18.

**58-269 Bonds; legal investments; for whom; considered securities.**

The bonds issued by and under the authority of the Nebraska Investment Finance Authority Act by the authority are declared to be legal investments in which all public officers or public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings associations, savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, personal representatives, and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of this state may invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and received by all public officers and bodies of this state, any agency or political subdivision of this state, and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of this state is now or may be later authorized by law.

**Source:** Laws 1983, LB 626, § 69; Laws 1991, LB 253, § 66.

**58-270 Authority; reports; contents; audit; issuance of bonds; notices.**

(1) The authority shall, following the close of each fiscal year, submit a report of its activities for the preceding year to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the authority. Each report shall set forth a complete operating and financial statement for the authority during the fiscal year it covers. An independent certified public accountant shall at least once in each year audit the books and accounts of the authority.

(2) At least fourteen days prior to taking any final action to authorize the issuance of bonds to provide financing for projects, the beneficiaries or borrowers of which are not specifically identified, the authority shall notify the Governor, the Clerk of the Legislature, and any news media requesting notification of such proposed issuance of bonds. The notification submitted to the Clerk of the Legislature shall be submitted electronically. Such notice shall include:

- (a) The public purposes to be effectuated and the needs to be addressed through the issuance of the bonds;
- (b) The manner in which such need was identified;
- (c) The anticipated principal amount of the bond issue and the anticipated date of issuance of the bonds;
- (d) The anticipated size of any reserve funds; and
- (e) The professionals involved in connection with the issuance of the bonds.

(3) Within thirty days following the issuance of bonds subject to subsection (2) of this section, the authority shall notify the Governor and the Clerk of the Legislature of:

- (a) The final principal amount of the bonds;
- (b) The net interest cost of the bonds;
- (c) The costs of issuance paid and to whom paid;
- (d) The total amount of any reserve funds;
- (e) The net interest cost to the beneficiaries or borrowers; and
- (f) The amount of funds available for loans.

The notification submitted to the Clerk of the Legislature shall be submitted electronically.

(4) With respect to bonds subject to subsection (2) of this section, until ninety-five percent of the proceeds of such bonds to be made available for loans are so used or a corresponding amount of such bonds are redeemed, the authority shall, no less often than quarterly after the issuance of such bonds, report to the Governor and the Clerk of the Legislature the status of the use of the proceeds of such issue of bonds. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Once the notice required pursuant to subsection (2) of this section is filed, nothing in this section shall require the authority to amend or supplement the notice prior to the issuance of the bonds.

(5) The notice and reporting requirements contained in this section shall be deemed satisfied upon good faith compliance by the authority. The failure to comply with any part of this section shall not affect the validity of any bonds issued by the authority.

**Source:** Laws 1983, LB 626, § 70; Laws 1984, LB 372, § 12; Laws 1991, LB 253, § 67; Laws 2012, LB782, § 86.

**58-271 Act, how construed.**

Neither the Nebraska Investment Finance Authority Act nor anything contained in such act is or shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any other law of this state, and such act is cumulative to such powers. Such act does and shall be construed to provide a complete, additional, and alternative method for the



doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws. The issuance of bonds under the provisions of such act need not comply with the requirements of any other state laws applicable to the issuance of bonds, notes, and other obligations. No proceedings, notice, or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in such act. All projects for which funds are advanced, loaned, or otherwise provided by the authority under such act must be in compliance with any land-use, zoning, subdivision, and other laws of this state applicable to the lands upon which such project is to be constructed or located.

**Source:** Laws 1983, LB 626, § 71.

**58-272 Authority; successor to certain entities; transfer of property, funds, and obligations to authority; actions by predecessor entities; how treated.**

The authority shall be the successor to the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, and the Nebraska Development Finance Fund. All properties, rights in land, buildings, records, and equipment and any funds, money, revenue, receipts, or assets of the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, and the Nebraska Development Finance Fund shall belong to the authority as successor. All obligations, debts, commitments, and liabilities of the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, and the Nebraska Development Finance Fund shall become obligations, debts, commitments, and liabilities of the authority. Any resolution with respect to the issuance of bonds by the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, or the Nebraska Development Fund and any other action taken by the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, or the Nebraska Development Finance Fund with respect to assisting in the financing of any project shall be a resolution of the authority or an action taken by the authority. The rules and regulations adopted by the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, and the Nebraska Development Finance Fund shall remain in effect until amended, repealed, or replaced by the authority. If a project application is pending before the Nebraska Mortgage Finance Fund, the Nebraska Agricultural Development Corporation, or the Nebraska Development Finance Fund on August 26, 1983, and such project is eligible to be financed under the Nebraska Mortgage Finance Fund Act, the Nebraska Agricultural Development Corporation Act, or the Nebraska Development Finance Fund Act, such project shall be deemed to be eligible for financing by the authority.

**Source:** Laws 1983, LB 626, § 72.

### ARTICLE 3

#### SMALL BUSINESS DEVELOPMENT

Section

- 58-301. Repealed. Laws 2009, LB 154, § 27.
- 58-302. Repealed. Laws 2009, LB 154, § 27.
- 58-303. Repealed. Laws 2009, LB 154, § 27.
- 58-304. Repealed. Laws 2009, LB 154, § 27.
- 58-305. Repealed. Laws 2009, LB 154, § 27.
- 58-306. Repealed. Laws 2009, LB 154, § 27.
- 58-307. Repealed. Laws 2009, LB 154, § 27.

## Section

- 58-308. Repealed. Laws 2009, LB 154, § 27.
- 58-309. Repealed. Laws 2009, LB 154, § 27.
- 58-310. Repealed. Laws 2009, LB 154, § 27.
- 58-311. Repealed. Laws 2009, LB 154, § 27.
- 58-312. Repealed. Laws 2009, LB 154, § 27.
- 58-313. Repealed. Laws 2009, LB 154, § 27.
- 58-314. Repealed. Laws 2009, LB 154, § 27.
- 58-315. Repealed. Laws 2009, LB 154, § 27.
- 58-316. Repealed. Laws 2009, LB 154, § 27.
- 58-317. Repealed. Laws 2009, LB 154, § 27.
- 58-318. Repealed. Laws 2009, LB 154, § 27.
- 58-319. Repealed. Laws 2009, LB 154, § 27.
- 58-320. Repealed. Laws 2009, LB 154, § 27.
- 58-321. Repealed. Laws 2009, LB 154, § 27.
- 58-322. Repealed. Laws 2009, LB 154, § 27.
- 58-323. Repealed. Laws 2009, LB 154, § 27.
- 58-324. Repealed. Laws 2009, LB 154, § 27.
- 58-325. Repealed. Laws 2009, LB 154, § 27.
- 58-326. Repealed. Laws 2011, LB 4, § 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**58-326 Repealed. Laws 2011, LB 4, § 1.**

#### ARTICLE 4

#### RESEARCH AND DEVELOPMENT AUTHORITY

##### Section

58-401. Repealed. Laws 2001, LB 300, § 10.  
 58-402. Repealed. Laws 2001, LB 300, § 10.  
 58-403. Repealed. Laws 2001, LB 300, § 10.  
 58-404. Repealed. Laws 2001, LB 300, § 10.  
 58-405. Repealed. Laws 2001, LB 300, § 10.  
 58-406. Repealed. Laws 2001, LB 300, § 10.  
 58-407. Repealed. Laws 2001, LB 300, § 10.  
 58-408. Repealed. Laws 2001, LB 300, § 10.  
 58-409. Repealed. Laws 2001, LB 300, § 10.  
 58-410. Repealed. Laws 2001, LB 300, § 10.  
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 58-413. Repealed. Laws 2001, LB 300, § 10.  
 58-414. Repealed. Laws 2001, LB 300, § 10.  
 58-415. Repealed. Laws 2001, LB 300, § 10.  
 58-416. Repealed. Laws 2001, LB 300, § 10.  
 58-417. Repealed. Laws 2001, LB 300, § 10.  
 58-418. Repealed. Laws 2001, LB 300, § 10.  
 58-419. Repealed. Laws 2001, LB 300, § 10.  
 58-420. Repealed. Laws 2001, LB 300, § 10.  
 58-421. Repealed. Laws 2001, LB 300, § 10.  
 58-422. Repealed. Laws 2001, LB 300, § 10.  
 58-423. Repealed. Laws 2001, LB 300, § 10.  
 58-424. Repealed. Laws 2001, LB 300, § 10.  
 58-425. Repealed. Laws 2001, LB 300, § 10.  
 58-426. Repealed. Laws 2001, LB 300, § 10.  
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 58-432. Repealed. Laws 2001, LB 300, § 10.  
 58-433. Repealed. Laws 2001, LB 300, § 10.  
 58-434. Repealed. Laws 2001, LB 300, § 10.  
 58-435. Repealed. Laws 2001, LB 300, § 10.  
 58-436. Repealed. Laws 2001, LB 300, § 10.  
 58-437. Repealed. Laws 2001, LB 300, § 10.  
 58-438. Repealed. Laws 2001, LB 300, § 10.  
 58-439. Repealed. Laws 2001, LB 300, § 10.  
 58-440. Repealed. Laws 2001, LB 300, § 10.  
 58-441. Repealed. Laws 2001, LB 300, § 10.  
 58-442. Repealed. Laws 2001, LB 300, § 10.  
 58-443. Repealed. Laws 2011, LB 5, § 1.

**58-401 Repealed. Laws 2001, LB 300, § 10.**

**58-402 Repealed. Laws 2001, LB 300, § 10.**

- 58-403 Repealed. Laws 2001, LB 300, § 10.
- 58-404 Repealed. Laws 2001, LB 300, § 10.
- 58-405 Repealed. Laws 2001, LB 300, § 10.
- 58-406 Repealed. Laws 2001, LB 300, § 10.
- 58-407 Repealed. Laws 2001, LB 300, § 10.
- 58-408 Repealed. Laws 2001, LB 300, § 10.
- 58-409 Repealed. Laws 2001, LB 300, § 10.
- 58-410 Repealed. Laws 2001, LB 300, § 10.
- 58-411 Repealed. Laws 2001, LB 300, § 10.
- 58-412 Repealed. Laws 2001, LB 300, § 10.
- 58-413 Repealed. Laws 2001, LB 300, § 10.
- 58-414 Repealed. Laws 2001, LB 300, § 10.
- 58-415 Repealed. Laws 2001, LB 300, § 10.
- 58-416 Repealed. Laws 2001, LB 300, § 10.
- 58-417 Repealed. Laws 2001, LB 300, § 10.
- 58-418 Repealed. Laws 2001, LB 300, § 10.
- 58-419 Repealed. Laws 2001, LB 300, § 10.
- 58-420 Repealed. Laws 2001, LB 300, § 10.
- 58-421 Repealed. Laws 2001, LB 300, § 10.
- 58-422 Repealed. Laws 2001, LB 300, § 10.
- 58-423 Repealed. Laws 2001, LB 300, § 10.
- 58-424 Repealed. Laws 2001, LB 300, § 10.
- 58-425 Repealed. Laws 2001, LB 300, § 10.
- 58-426 Repealed. Laws 2001, LB 300, § 10.
- 58-427 Repealed. Laws 2001, LB 300, § 10.
- 58-428 Repealed. Laws 2001, LB 300, § 10.
- 58-429 Repealed. Laws 2001, LB 300, § 10.
- 58-430 Repealed. Laws 2001, LB 300, § 10.
- 58-431 Repealed. Laws 2001, LB 300, § 10.
- 58-432 Repealed. Laws 2001, LB 300, § 10.
- 58-433 Repealed. Laws 2001, LB 300, § 10.

- 58-434 Repealed. Laws 2001, LB 300, § 10.**
- 58-435 Repealed. Laws 2001, LB 300, § 10.**
- 58-436 Repealed. Laws 2001, LB 300, § 10.**
- 58-437 Repealed. Laws 2001, LB 300, § 10.**
- 58-438 Repealed. Laws 2001, LB 300, § 10.**
- 58-439 Repealed. Laws 2001, LB 300, § 10.**
- 58-440 Repealed. Laws 2001, LB 300, § 10.**
- 58-441 Repealed. Laws 2001, LB 300, § 10.**
- 58-442 Repealed. Laws 2001, LB 300, § 10.**
- 58-443 Repealed. Laws 2011, LB 5, § 1.**

## ARTICLE 5

### NEBRASKA REDEVELOPMENT ACT

#### Cross References

Community Development Law, see section 18-2101.

#### Section

- 58-501. Act, how cited.
- 58-502. Legislative findings.
- 58-503. Terms, defined.
- 58-504. Designated blighted and substandard area; application; hearing; approval.
- 58-505. Redevelopment project; application; hearing; approval.
- 58-506. Act; how construed.
- 58-507. Property taxes; how divided.
- 58-508. Redevelopment project valuation; county assessor; duties.
- 58-509. Property taxes; how treated.
- 58-510. Pledge of taxes; authorized.
- 58-511. Penal bond; required.
- 58-512. Powers supplemental; act, how construed.
- 58-513. Contracting public body; powers.
- 58-514. Bonds; issuance.
- 58-515. Bonds; liability; how paid; notes.
- 58-516. Bonds; how issued.
- 58-517. Bonds; how sold.
- 58-518. Bonds; signatures; negotiability.
- 58-519. Bonds; presumption of validity.
- 58-520. Bonds; leases; contracting public body; powers.
- 58-521. Default; contracting public body; powers.
- 58-522. Obligee; rights.
- 58-523. Bonds; authorized investment.
- 58-524. Bond validation proceeding; appeal.
- 58-525. Bonds or certificates; validation.
- 58-526. Public body or taxing body; supplemental powers.
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- 58-531. Act; how construed.
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- 58-533. Filing of applications; limitation.

**58-501 Act, how cited.**

Sections 58-501 to 58-533 shall be known and may be cited as the Nebraska Redevelopment Act.

**Source:** Laws 1995, LB 830, § 1.

**58-502 Legislative findings.**

The Legislature finds and declares the following facts and purposes of the Nebraska Redevelopment Act:

(1) It is the policy of this state to make revisions in its statutory structure if this will encourage both new and existing businesses to relocate to and expand in Nebraska and to provide appropriate inducements to encourage them to do so if this will aid in the economic and population growth of the state and help create better jobs for the citizens of the State of Nebraska and if this can be done in a fiscally sound and effective manner;

(2) The prevention and elimination of blighted and substandard areas is a matter of state public policy and public interest;

(3) There exists in and around certain cities of this state areas which are blighted and substandard due to a lack of sufficient economic activity, public and private infrastructure, job growth, wage levels, population growth, low-income and moderate-income housing, business expansion, and new construction;

(4) Such conditions have prevented economic and population growth in certain areas and are beyond remedy solely by the normal regulatory process and the ordinary operations of private enterprise; and

(5) The elimination of such conditions through the rehabilitation, acquisition, and redevelopment of such areas, and the application of ad valorem taxes on new investment in such areas, as provided in the act, are public uses and public purposes which the Legislature intends that the act will help accomplish.

**Source:** Laws 1995, LB 830, § 2.

**58-503 Terms, defined.**

For purposes of the Nebraska Redevelopment Act, the following definitions apply:

(1) Any term not otherwise defined has the same meaning as used in the Interlocal Cooperation Act;

(2) Area application means the area application in section 58-504;

(3) Area of operation means and includes the area within the corporate limits of the public body;

(4) Base year means the year immediately preceding the year during which the project application was submitted;

(5) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the company or its predecessors during the base year and who is employed at the redevelopment project;

(6) Blighted and substandard area means an area either within a city or cities or up to ten miles outside of the area of operation of a city or cities of the

metropolitan or primary class, up to six miles outside of the area of operation of a city or cities of the first class, and up to three miles outside of the area of operation of a city or cities of the second class or village or villages, or any combination thereof, in which by reason of (a) the existence of significant areas of unimproved or insufficiently developed land, (b) the lack of a significant number of new and growing business enterprises, (c) the lack of sufficient economic growth, (d) the dilapidation, deterioration, age, or obsolescence of buildings and improvements, (e) the lack of a state, regional, or local redevelopment plan or program, (f) the existence of significant conditions which prevent or do not promote economic growth within such area, (g) the lack of medical and health care facilities, (h) the lack of utilities and other government services infrastructure, or (i) any combination of such factors, there exists (i) insufficient safe, sanitary, and available housing for low-income and moderate-income families and persons, including, but not limited to, persons displaced by clearing of slums or blighted areas or by other public programs, (ii) job growth at less than the United States or midwest average job growth rates, (iii) average wages at less than the United States or midwest average wage levels, (iv) a net emigration of population, (v) population growth that is less than that of the United States or the midwest, (vi) the failure to utilize substantial land areas at their highest and best uses in comparison to other areas within such city or cities, (vii) an abundance of property that is not on the tax rolls at levels at least equal to industrial and residential valuation levels, or (viii) any combination of such results;

(7) Board means a board consisting of the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council;

(8) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Nebraska Redevelopment Act;

(9) City means any city or incorporated village of this state;

(10) Company means any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes;

(11) Contracting public body means the city or joint entity that enters into the project agreement with the company;

(12) Designated blighted and substandard area means an area that is a blighted and substandard area which the board designates as such under the Nebraska Redevelopment Act. Such area may include the area of operation of more than one taxing body;

(13) Employee means a person employed at the redevelopment project;

(14) Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(15) Governing body means the city council, board of trustees, other legislative body, or person or persons charged with governing the taxing body or contracting public body;

(16) Investment means the value of qualified property incorporated into or used at the project after the date of the application. For qualified property owned by the company, the value is the original cost of the property. For qualified property rented by the company, the value is the average net annual rent multiplied by the number of years of the lease for which the company was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building is not excluded from the computation;

(17) Joint entity means a joint entity created pursuant to the Interlocal Cooperation Act or a joint public agency created pursuant to the Joint Public Agency Act, but consisting only of two or more cities. Such joint entity shall have all of the powers set forth in the Nebraska Redevelopment Act and the Interlocal Cooperation Act or the Joint Public Agency Act;

(18) Number of new employees means the excess of the number of equivalent employees employed at the redevelopment project during a year over the number of equivalent employees during the base year;

(19) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any public body property used in connection with a redevelopment project or any assignee or assignees of such lessor's interest or any part thereof;

(20) Person means any individual, firm, partnership, corporation, company, association, joint-stock association, limited liability company, subchapter S corporation, or body politic and includes any trustee, receiver, assignee, or similar representative;

(21) Personal property has the same meaning as in section 77-104;

(22) Project agreement means the project agreement provided for in the Nebraska Redevelopment Act between the company and the applicable contracting public body;

(23) Project application means the project application in section 58-505;

(24) Project area means the area described in the project application. Such area may include the area of operation of more than one taxing body;

(25) Public body means any Nebraska county, city, school district, or contracting public body;

(26) Qualified business means any business engaged in the activities listed in subdivisions (a) through (e) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the company or used by the purchaser in any of the following activities:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;



(b) The performance of data processing, telecommunication, insurance, or financial services. Financial services, for purposes of this subdivision, only includes financial services provided by any financial institution subject to tax under sections 77-3801 to 77-3807 or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of any activities, including headquarter facilities, relating to such activity; or

(e) Any combination of the activities listed in this subdivision;

(27) Qualified property means any tangible property of the type subject to depreciation, amortization, or other recovery under the Internal Revenue Code or the components of such property that will be located and used at the redevelopment project. Qualified property does not include aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or property that is rented by the company that is party to the project agreement to another person;

(28) Real property has the same meaning as in section 77-103;

(29) Redevelopment period means a period of ten years beginning with the year after which the required increases in employment and investment were met or exceeded and the next nine years;

(30) Redevelopment project means a project described in the Nebraska Redevelopment Act, approved as described in the act;

(31) Redevelopment project valuation means the valuation for assessment of the taxable real property and taxable personal property in the project area of a redevelopment project last certified for the year prior to the effective date of the project agreement;

(32) Taxing body means any Nebraska city, village, municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state having the power to levy ad valorem taxes; and

(33) Year means the taxable year of the company.

The changes made in this section by Laws 1997, LB 264, apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

**Source:** Laws 1995, LB 830, § 3; Laws 1997, LB 264, § 1; Laws 1999, LB 87, § 80.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Nebraska Investment Council**, see section 72-1237.

**Nebraska Revenue Act of 1967**, see section 77-2701.

### **58-504 Designated blighted and substandard area; application; hearing; approval.**

(1) Any city or joint entity may apply to the state to designate an area as a designated blighted and substandard area under the Nebraska Redevelopment Act. Such area may extend up to ten miles outside of the area of operation of an applying city of the metropolitan or primary class or joint entity, up to six miles outside of the area of operation of an applying city of the first class or joint

entity, and up to three miles outside of the area of operation of an applying city of the second class or village or joint entity.

(2) To apply for such designation, such city or joint entity shall file an area application with the board. The area application shall contain:

(a) The proposed area to be designated as the designated blighted and substandard area;

(b) A description of the characteristics of such area that cause it to be a blighted and substandard area under the act;

(c) A statement that such city or joint entity intends that such area be designated by the board as a designated blighted and substandard area in order to allow for potential redevelopment projects under the act;

(d) The application to the state must have a description of the specific project for which a designation has been requested. No other project can be initiated, if such designation is approved, without again making application to the board; and

(e) Such other information as the board determines is necessary to decide whether the area is a blighted and substandard area under the act.

(3) The city or joint entity filing such area application shall at the same time of filing such application also provide notice of such filing and a copy of such area application to any governing body of the other public bodies whose area of operation is covered in whole or in part by the proposed designated blighted and substandard area and to any school district which has territory within twenty miles of the border of the proposed designated blighted and substandard area.

(4) Upon receipt of an area application, the board shall schedule a public hearing to be held within fifteen days after such receipt to receive public input. The board shall publish notice of the public hearing for five business days in advance of the hearing in some legal newspaper of general circulation near the proposed designated area. The notice shall list the name of the city or joint entity that filed the application and the legal or other sufficient description of the area and shall state that the area is proposed to be designated as a blighted and substandard area under the Nebraska Redevelopment Act.

(5) The board shall determine by majority vote no sooner than fifteen days but no later than sixty days after the date of filing of the area application whether to approve or disapprove the area application's request for designation of such area. Within ten days after receipt of such area application, any other governing body of any public body whose area of operation is included in whole or in part in the proposed designated blighted and substandard area and any school district which has territory within twenty miles of the border of the proposed designated blighted and substandard area may file a written objection with the board which the board shall consider in its decision as to whether or not it approves the application.

(6) The address of the board shall be the address of the Department of Revenue.

(7) The board may approve the area application if the proposed designated blighted and substandard area fits within the definition of such an area under the act and if such area application is in the public interest. Such designation shall not affect whether such area is considered blighted or substandard under any law other than the act. Such designation shall if approved remain in effect

for project applications filed within twelve months after the date of designation if at the time of any project application being submitted, the project area continues to fit within the definition of blighted and substandard relied on in making the original designation.

(8) The board may modify or return the area application or approve a smaller blighted and substandard area that is contained within the area proposed in the area application without additional notice or publication if in the public interest and if such smaller area is within the definition of a blighted and substandard area under the act.

(9) If the board approves such area application, then, for purposes of Article VIII, section 12, of the Constitution of Nebraska, as applied in the act, the designated blighted and substandard area is considered as determined by law to be a designated blighted and substandard area and the property within such area is considered to be determined by law to be substandard and blighted property.

(10) The area application and all supporting information shall be considered public information.

**Source:** Laws 1995, LB 830, § 4; Laws 1997, LB 344, § 1.

**58-505 Redevelopment project; application; hearing; approval.**

(1) A company may file a project application with the city or joint entity that filed the area application for the designated blighted and substandard area to undertake and complete a redevelopment project in such designated area and to obtain tax increment financing under the Nebraska Redevelopment Act for such project. Such application may be filed either before or after approval by the board of the area application for designation of such area. The company shall, at the time of filing the project application with the city or joint entity, also file a copy of such project application with the governing body of each of the public bodies whose area of operation or the area within three miles thereof includes in whole or in part the project area. Not later than five calendar days before approving or disapproving the project application, the city or joint entity shall, by United States mail, postage prepaid, mail to the owners of real property described in the project application as being within the project area a written notice stating that the property owned by the person or persons is proposed to be included in the project area of a project under the Nebraska Redevelopment Act, that a project application has been filed with the city or joint entity, the date, time, and location of the public hearing, and where additional information may be obtained. The notice shall be sent to the owner or owners of the real property as their names appear and at the address indicated in the records of the county assessor for property tax purposes on the business day immediately prior to the date of the mailing. The city or joint entity may, but shall not be required to, send the notice by certified or registered United States mail. Substantial compliance with this notice requirement shall be deemed sufficient for all purposes of the act.

(2) Such city or joint entity shall no sooner than twenty days after the filing of such project application, and no later than sixty days after the filing of such project application, either approve or disapprove such project application. Such project application shall not be approved if (a) the governing body of a county whose area of operation includes in whole or part the project area, (b) the governing body of a city whose area of operation and the area within three

miles thereof includes in whole or part the project area, or (c) any electric utility serving the project area shall, within fifteen days after receipt of the project application, file with such city or joint entity a written objection to approval of the project application signed by the head of such governing body. The city, county, or electric utility may withdraw the objection within thirty days after it is filed.

(3) The project application shall contain:

(a) The exact name of the company and any related companies which will be included in the redevelopment project;

(b) A statement describing in detail the nature of the company's business, including the products sold and respective markets;

(c) A legal description of the project area;

(d) A detailed narrative that describes the proposed redevelopment project, including an allocation of the proposed expenditures for site acquisition, site preparation, and buildings and improvement construction, equipment, and other personal property purchases and leases;

(e) A request that the proposed redevelopment project be considered for approval by such city or joint entity;

(f) A copy of the company's internal authorization for the redevelopment project; and

(g) The number of base-year employees and the expected number of new employees, including the expected timing of the hiring of the new employees, the anticipated timing and anticipated amounts of new investment in buildings, equipment, and other real property and personal property and the average salaries expected by category for the new employees to be employed at the redevelopment project.

(4) The city or joint entity shall determine whether to approve the company's project application based on its determination as to whether the redevelopment project will sufficiently help enable the state and local communities to accomplish the legislative purposes of the act. The city or joint entity shall be governed by and shall take into consideration all of the following factors in making such determination:

(a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the redevelopment project;

(b) The type of industry in which the company and the project would be engaged;

(c) The timing, amount of, and types of investment in qualified property to be made at the project;

(d) Whether the city or joint entity believes the redevelopment project would occur in this state regardless of whether the application was approved; and

(e) Whether the benefits allowed by the act for the redevelopment project, when compared to the local tax revenue and fees generated by the redevelopment project investment and employment, both on a direct and indirect multiplier basis, provide an adequate net benefit to the public bodies affected by such redevelopment project.

(5) A project shall be considered eligible under the act and may be approved by the city or joint entity only if the application defines a redevelopment project (a) which is consistent with the legislative purposes contained in section 58-502

in one or more qualified business activities within the project area and (b) that will result at the project area in the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred, and when such new investment and employment will occur within five years, meaning by the end of the fourth year after the end of the year the application was filed, and such new investment and employment will be maintained for the entire redevelopment period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(6) If the redevelopment project application is approved by the city or joint entity, the city or joint entity shall as the contracting public body enter into a written project agreement with the company. The project agreement shall be executed on behalf of the contracting public body by the person normally or specifically authorized to execute agreements on behalf of such entity. In the project agreement, the company shall agree to complete the redevelopment project and the contracting public body shall designate the approved plans of the company as a redevelopment project and, in consideration of the company's agreement, agree to allow the provisions relating to indebtedness by a city or cities and the payment of such indebtedness through tax increment financing as provided for in the act. The contracting public body shall not incur indebtedness under the agreement except for the purposes of land acquisition, site preparation, extension of public services, and improvements to the site, including buildings for other than residential use. The project agreement shall contain other terms as the city or joint entity and the company determine are appropriate or necessary to protect the affected public bodies and to carry out the legislative purposes of the act and may contain terms for a recapture or other remedy if the company fails to attain the required levels of employment and investment within the time period contained in the act or fails to maintain such levels for the redevelopment period. The project application shall be considered as part of the project agreement.

(7) If the city or joint entity approves such project application, then the project area is, for purposes of Article VIII, section 12, of the Constitution of Nebraska, as applied in the act, considered as determined by law to be substandard and blighted property in a redevelopment project.

**Source:** Laws 1995, LB 830, § 5.

**58-506 Act; how construed.**

The Nebraska Redevelopment Act shall be construed in accordance with the authority granted by Article VIII, section 12, of the Constitution of Nebraska.

**Source:** Laws 1995, LB 830, § 6.

**58-507 Property taxes; how divided.**

The project agreement shall contain a provision that all property taxes levied on the assessed valuation of the real property or personal property, or both, in the project area of the redevelopment project by or for the benefit of all taxing bodies shall be divided, for a period not to exceed fifteen years after the effective date of such project agreement, as follows:

(1) That portion of the property tax which is produced by the levy at the rate fixed each year by or for each such taxing body upon the redevelopment project valuation shall be paid into the funds of each such taxing body in the same proportion as are all other taxes collected by or for such taxing body; and

(2) That portion of the property tax on real property, personal property, or both, as provided in the project agreement in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund established by the contracting public body to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes, advances of money, or other indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such contracting public body for financing or refinancing, in whole or in part, such redevelopment project. When such bonds, loans, notes, advances of money, or other indebtedness, including interest and premiums due, have been paid, the contracting public body shall so notify the county assessor and county treasurer and all property taxes upon taxable real property and personal property in such redevelopment project shall thereafter be paid into the funds of and applied as all other taxes of the respective taxing bodies.

**Source:** Laws 1995, LB 830, § 7.

**58-508 Redevelopment project valuation; county assessor; duties.**

Commencing on the effective date of the project agreement, the county assessor, or county clerk if he or she is ex officio county assessor, of the county or counties in which the redevelopment project is located, shall transmit to the contracting public body and to the county treasurer, upon request, the redevelopment project valuation and shall annually certify to such contracting public body and the county treasurer the current valuation for assessment of taxable real property and personal property in the redevelopment project. The county assessor shall undertake, upon request of such contracting public body, an investigation, examination, and inspection of the taxable real property and taxable personal property in the redevelopment project and shall reaffirm or revalue the current value for assessment for such property in accordance with the findings of such investigation, examination, and inspection.

**Source:** Laws 1995, LB 830, § 8.

**58-509 Property taxes; how treated.**

In each year after the determination of a redevelopment project valuation as outlined in section 58-508, the county assessor and the county board of equalization of each affected county shall include no more than the redevelopment project valuation of the taxable real property and taxable personal property in the redevelopment project in the assessed valuation upon which is computed the rates of all taxes levied by any taxing body on such project. In each year for which the current assessed valuation on taxable real property and taxable personal property in the redevelopment project exceeds the redevelopment project valuation, the county treasurer shall remit to the contracting public body, instead of to any taxing body, that proportion of all property taxes on real property and personal property paid that year on the redevelopment project which such excess valuation bears to the current assessed valuation.

**Source:** Laws 1995, LB 830, § 9.

**58-510 Pledge of taxes; authorized.**

In the proceedings for the issuance of bonds, the making of loans or advances of money, or the incurring of any indebtedness, whether funded, refunded, assumed, or otherwise, by a contracting public body to finance or refinance, in

whole or in part, a redevelopment project, the portion of taxes mentioned in subdivision (2) of section 58-507 shall be pledged for the payment of the principal of, premium, if any, and interest on such bonds, loans, notes, advances, or indebtedness.

**Source:** Laws 1995, LB 830, § 10.

**58-511 Penal bond; required.**

Any company entering into a project agreement for the undertaking of a redevelopment project pursuant to the Nebraska Redevelopment Act which contains the provision outlined in section 58-507 shall be required before commencing work to execute, in addition to all bonds that may be required, a penal bond with good and sufficient surety to be approved by the contracting public body conditioned that such contractor (1) shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing the contractor or its subcontractors with labor or materials performed or used in the prosecution of the work provided for in such contract and (2) will indemnify and save harmless the contracting public body to the extent of any payments in connection with the carrying out of such contracts which such contracting public body may be required to make under the law.

**Source:** Laws 1995, LB 830, § 11.

**58-512 Powers supplemental; act, how construed.**

The powers conferred by the Nebraska Redevelopment Act shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provision of the laws of the state with reference to the matters covered thereby and shall be considered as a complete and independent act and not as amendatory of or limited by any other provisions of the laws of the state. The act and all grants of power, authority, rights, or discretion made to a city and to a contracting public body shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon a city or a contracting public body.

**Source:** Laws 1995, LB 830, § 12.

**58-513 Contracting public body; powers.**

The contracting public body shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Nebraska Redevelopment Act, including, but not limited to, the following powers:

(1) All authority, powers, and duties which such contracting public body has under other provisions of law unless specifically limited in the act;

(2) Within the designated blighted and substandard area to:

(a) Purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, eminent domain, or otherwise any real property or personal property, or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project, except that the power of eminent domain may be exercised only against nonpublic entities and individuals;

(b) Hold, improve, clear, or prepare for redevelopment any such property;

(c) Sell, lease for a term not exceeding ninety-nine years, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate, or

otherwise encumber or dispose of any real property or personal property, or any interest therein;

(d) Enter into contracts with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, or recreational purposes or for public purposes in accordance with the project agreement and such other covenants, restrictions, and conditions as such contracting public body may deem necessary to eliminate or prevent a recurrence of blighted and substandard areas or to effectuate the purposes of the act;

(e) Make any of the covenants, restrictions, or conditions of such contract covenants running with the land and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in such contracting public body to terminate such contracts and any interest in the property created;

(f) Borrow money, issue bonds, and provide security for loans or bonds;

(g) Establish a revolving loan fund;

(h) Insure or provide for the insurance of any real property or personal property or the operations of such contracting public body against any risks or hazards, including the power to pay premiums on any such insurance;

(i) Enter into any contracts necessary to effectuate the purposes of the act; and

(j) Provide grants, loans, or other means of financing to public or private persons in order to accomplish the rehabilitation, acquisition, or redevelopment in accordance with the project agreement. No statutory provision with respect to the acquisition, clearance, or disposition of property by other public bodies or taxing bodies shall restrict such contracting public body from exercising the powers under the act in such functions, unless the Legislature specifically states otherwise;

(3) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks or other banks may legally invest funds subject to their control. To redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, and such bonds redeemed or purchased shall be canceled;

(4) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, from the state, county, municipality, or other public body, or from any sources, public or private, including charitable funds, foundations, corporations, trusts, or requests, for the purposes of the act, to give such security as may be required, and to enter into and carry out contracts in connection with the act. Notwithstanding any other provision of law, to include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as such contracting public body deems reasonable and appropriate and which are not inconsistent with the purposes of the act;

(5) Within the designated blighted and substandard area, to make or have made all surveys, appraisals, studies, and plans necessary to the carrying out of the purposes of the act and to contract or cooperate with any and all persons or



agencies, public or private, in the making and carrying out of such surveys, appraisals, studies, and plans;

(6) To make such expenditures as may be necessary to carry out the purposes of the act, and to make expenditures from funds obtained from the federal government without regard to any other laws pertaining to the making and approval of appropriations and expenditures;

(7) To annex all or any portion of the project area, whether such area is contiguous or not contiguous to the area of operation of the contracting public body if both the company and contracting public body agree to such annexation, except that (a) the annexing contracting public body shall comply with all other provisions of law relating to annexation generally applicable to a municipality of the class of the contracting public body, (b) the contracting public body shall not, in consequence of the annexation under this subdivision of any noncontiguous land, exercise the authority granted to it by statute to extend its jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any city, village, or county currently exercising such jurisdiction over the area surrounding the annexed portion of the project area, and (c) the provisions of section 70-1008 shall apply to the annexation of any contiguous land by the contracting public body, but the annexation of any noncontiguous land undertaken pursuant to the act by a contracting public body shall not result in any change to the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the contracting public body lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the contracting public body, such noncontiguous area shall, solely for the purposes of section 70-1008, be treated as if it had been annexed by the contracting public body on the date upon which the connecting intervening territory had been formally annexed; and

(8) To exercise all or any part or combination of powers granted in the act.

**Source:** Laws 1995, LB 830, § 13.

**58-514 Bonds; issuance.**

The contracting public body may issue bonds from time to time for any of its corporate purposes as specified in a project agreement or with respect to the acquisition, rehabilitation, or redevelopment of property in a designated blighted and substandard area or as otherwise permitted by the Nebraska Redevelopment Act. The contracting public body may also issue refunding bonds for the purpose of paying, retiring, or otherwise refinancing, or in exchange for any or all of the principal or interest upon bonds previously issued by it. The contracting public body may issue such types of bonds as it determines, including, without limiting the generality of the foregoing, bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenue of the redevelopment project financed with proceeds of such bonds;

(2) Exclusively from the income, proceeds, and revenue of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds;

(3) Exclusively from its revenue and income, including such tax revenue or receipts as may be authorized, including those which may be pledged under section 58-510, and from such grants and loans as may be received; or

(4) From all or part of the income, proceeds, and revenue enumerated in subdivisions (1), (2), and (3) of this section.

Any such bonds may be additionally secured by a pledge of any loan, grant, or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the contracting public body, and the contracting public body shall not pledge the credit or taxing power of the state or any political subdivision thereof, except tax receipts authorized under this section or pledged under section 58-510, or place any lien or encumbrance on any property owned by the state, county, or city used by the contracting public body.

**Source:** Laws 1995, LB 830, § 14.

**58-515 Bonds; liability; how paid; notes.**

The contracting public body, the members of the governing body of the contracting public body, and any person executing the bonds shall not be liable personally on the bonds by reason of the issuance of the bonds. The bonds and other obligations of the contracting public body, and such bonds and obligations shall so state on their face, shall be special limited obligations of the contracting public body payable solely from a portion of ad valorem taxes levied by taxing bodies on property in the redevelopment project area and allocable to and collected by the contracting public body as authorized by the Nebraska Redevelopment Act and shall not be a debt of the contracting public body. The contracting public body shall not be liable on such bonds except to the extent authorized by sections 58-507 to 58-510. Such bonds or obligations shall not be payable out of any funds or properties other than those of the contracting public body acquired for the purposes of the act except to the extent authorized by sections 58-507 to 58-510. Except to the extent otherwise authorized, the bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of the contracting public party are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes.

The contracting public body may issue bond anticipation notes and may issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented in an amount not exceeding in the aggregate at any time outstanding the amount of bonds then or before authorized. Payment of such notes shall be made from any money or revenue which the contracting public body may have available for such purpose or from the proceeds of the sale of bonds of the contracting public body, or such notes may be exchanged for a like amount of such bonds. The contracting public body may pledge such money or revenue of the contracting public body subject to prior pledges, if any, for the payment of such notes, and may in addition secure the notes in the same manner as provided for bonds. All notes shall be issued and sold in the same manner as bonds, and any contracting public body may contract for the future sale of notes on terms and conditions stated in such contracts, and the contracting public body may pay such consideration as it deems proper for any commitments to purchase notes and

bonds in the future. Such notes shall also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of such notes, of bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in an amount deemed by the issuing party sufficient to provide for the payment of the notes in full at the maturity of the notes. The contracting public body may provide in the collateral agreement that the notes may be exchanged for bonds held as collateral security for the notes, or that the trustee may sell the bonds if the notes are not otherwise paid at maturity and apply the proceeds of such sale to the payment of the notes. Such notes shall bear interest at a rate or rates set by the contracting public body and shall be sold at such price as will cause the interest cost on the note to not exceed such rate or rates.

Any pledge of revenue, income, receipts, proceeds, or other money made by a contracting public body for the payment of bonds or notes shall be valid and binding from the time such pledge is made. The revenue, income, receipts, proceeds, and other money so pledged and thereafter received by the contracting public body shall immediately be subject to the lien of such pledge without the physical delivery or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the contracting public body irrespective of whether such parties have actual notice. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

**Source:** Laws 1995, LB 830, § 15.

#### **58-516 Bonds; how issued.**

Bonds of a contracting public body shall be authorized by resolution of its governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide.

**Source:** Laws 1995, LB 830, § 16.

#### **58-517 Bonds; how sold.**

The bonds may be sold by the contracting public body in such manner and for such price as the contracting public body determines, at a discount, at par, or at a premium, at private negotiated sale or at public sale after notice published prior to such sale in a legal newspaper having general circulation in the municipality, in such other medium of publication as the contracting public body deems appropriate, or may be exchanged by the contracting public body for other bonds issued by it under the Nebraska Redevelopment Act. Bonds which are issued under this section may be sold by the contracting public body to the federal government at private sale at a discount, at par, or at a premium and, if less than all of the authorized principal amount of such bonds is sold by the contracting public body to the federal government, the balance or any

portion of the balance may be sold by the contracting public body at private sale at a discount, at par, or at a premium.

**Source:** Laws 1995, LB 830, § 17.

**58-518 Bonds; signatures; negotiability.**

In case any of the members or officers of the contracting public body whose signatures appear on any bonds shall cease to be such members or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, as if such members or officers had remained in office until the delivery. Any bonds issued pursuant to the provisions of the Nebraska Redevelopment Act are fully negotiable.

**Source:** Laws 1995, LB 830, § 18.

**58-519 Bonds; presumption of validity.**

In any suit, action, or proceedings involving the validity or enforceability of any bond of a contracting public body or the security therefor brought after the lapse of thirty days after the bonds are issued, any such bond reciting in substance that it has been issued by the contracting public body to aid in financing a redevelopment project shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of the Nebraska Redevelopment Act.

**Source:** Laws 1995, LB 830, § 19.

**58-520 Bonds; leases; contracting public body; powers.**

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, the contracting public body, in addition to its other powers, may:

(1) Pledge all or any part of its gross or net rents, fees, or revenue arising from the redevelopment project to which its right then exists or may thereafter come into existence;

(2) Mortgage all or any part of its real property or personal property in the project area, then owned or acquired later;

(3) Covenant against pledging all or any part of its rents, fees, and revenue, or against mortgaging all or any part of its real property or personal property in the project area, to which its right or title then exists or may later come into existence, or against permitting or suffering any lien on such revenue or property, covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any redevelopment project, or any part thereof, and covenant as to what other or additional debts or obligations may be incurred by it;

(4) Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds of the bonds, provide for the replacement of lost, destroyed, or mutilated bonds, covenant against extending the time for the payment of its bonds or interest thereon, and covenant for the redemption of the bonds and to provide the terms and conditions of the bonds;

(5) Covenant, subject to the limitations contained in the Nebraska Redevelopment Act, as to the amount of revenue to be raised each year or other period of

time by rents, fees, and other revenue, and as to the use and disposition to be made of such revenue, establish or authorize the establishment of special funds or money held for operating costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of the money held in such funds;

(6) Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to the amendment or abrogation, and the manner in which such consent may be given;

(7) Covenant as to the use, maintenance, and replacement of any or all of its real property or personal property in the project area, the insurance to be carried on such property, the use and disposition of insurance money, and warrant its title to such property;

(8) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenants, conditions, or obligations, and covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) Vest in any obligees of the contracting public body the right to enforce the payment of the bonds or any covenants securing or relating to the bonds, vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default by the contracting public body, to take possession of and use, operate, and manage any redevelopment project or any part of such project, title to which is in the contracting public body, or any funds connected with the project, and collect the rents and revenue and dispose of such money in accordance with the agreement of the contracting public body with such obligees, provide for the powers and duties of such obligees and to limit their liabilities, and provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

(10) Exercise all or any part or combination of the powers granted by this section and make such covenants, in addition to those necessary, convenient, or desirable in order to secure its bonds, or, in the absolute discretion of the contracting public body, as will tend to make the bonds more marketable.

**Source:** Laws 1995, LB 830, § 20.

**58-521 Default; contracting public body; powers.**

The contracting public body may by resolution, trust indenture, mortgage, lease, or other contract confer upon any obligee holding or representing a specified amount in bonds, the right to, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instruments, by suit, action, or proceeding in any court of competent jurisdiction:

(1) Cause possession of any redevelopment project or any part of the project, title to which is in the contracting public body, to be surrendered to any such obligee;

(2) Obtain the appointment of a receiver of any redevelopment project of the contracting public body or any part of the project, title to which is in the contracting public body, and of the rents and profits from the project. If a receiver is appointed, he or she may enter and take possession of, carry out,

operate, and maintain such project or any part of the project and collect and receive all fees, rents, revenue, or other charges thereafter arising from the project, and shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of the contracting public body as the court directs; and

(3) Require the contracting public body and the members, officers, agents, and employees of the contracting public body to account as if it and they were the trustee of an express trust.

**Source:** Laws 1995, LB 830, § 21.

**58-522 Obligee; rights.**

An obligee of a contracting public body shall have the right in addition to all other rights which may be conferred upon such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action, or proceeding at law or in equity to compel the contracting public body and the members, officers, agents, or employees to perform each and every term, provision, and covenant contained in any contract of the contracting public body with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements to the contracting public body and the fulfillment of all duties imposed upon the contracting public body by the provisions of the Nebraska Redevelopment Act; and

(2) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the contracting public body.

**Source:** Laws 1995, LB 830, § 22.

**58-523 Bonds; authorized investment.**

All public officers, municipal corporations, political subdivisions, and public bodies; all banks, trust companies, bankers, savings banks, financial institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a contracting public body pursuant to the Nebraska Redevelopment Act and such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any person, political subdivision, and officer, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. However, nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in the selection of securities.

**Source:** Laws 1995, LB 830, § 23.

**58-524 Bond validation proceeding; appeal.**

(1) Any contracting public body may determine its authority to incur indebtedness and to apply or pledge the ad valorem taxes, all as provided in the

Nebraska Redevelopment Act, and the legality of all proceedings in connection therewith. For this purpose a petition may be filed in the district court in the county in which the area of operation, or part thereof, of the contracting public body is located against the state and its taxpayers and citizens. Such action shall constitute a bond validation proceeding.

(2) The petition shall set out the contracting public body's authority for incurring the indebtedness and pledging or applying such ad valorem taxes and for all the other essential proceedings had or taken in connection therewith, the amount of the indebtedness issued or to be issued, and the interest they are to bear.

(3) The court shall issue an order, directed against the state and its taxpayers and citizens, requiring the state through the Attorney General to appear at a designated time and place within the county where the petition is filed and show why the petition should not be granted and the proceedings and bonds or tax matters validated. A copy of the petition and order shall be served on the Attorney General at least twenty days before the time fixed for hearing. The Attorney General shall examine the petition, and if it appears or there is reason to believe that it is defective, insufficient, or untrue, or if in the opinion of the Attorney General the issuance of the indebtedness in question has not been duly authorized, defense shall be made by the Attorney General. The Attorney General shall have access, for the purposes of such action, to all records and proceedings of the contracting public body, and any officer, agent, or employee having charge, possession, or control of any of the books, papers, or records of the contracting public body shall exhibit them for examination on demand of the Attorney General and shall furnish, without cost, duly authenticated copies which pertain to the proceedings for the issuance of the indebtedness and the pledge or application of taxes or which may affect their legality.

(4) At the hearing the court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay. The company and any bondholder may intervene in such proceeding.

(5) The Attorney General, a contracting public body, company, or any bondholder may appeal such order in the normal manner and time for appeals from the district court prescribed by law and applicable court rules.

(6) If the judgment validates such indebtedness, tax matters, and proceedings and no appeal is taken within the time prescribed, or if taken and the judgment is affirmed, such judgment is forever conclusive as to all matters adjudicated against the plaintiff and all persons affected by the action, including all taxpayers and citizens.

(7) If any judgment extends into more than one county it shall be recorded in each such county.

(8) The court costs shall be paid by the contracting public body filing the petition except as the court otherwise determines is equitable.

(9) No judge shall be disqualified in any validation action because he or she is a landowner or taxpayer of any county or city affected.

**Source:** Laws 1995, LB 830, § 24.

**58-525 Bonds or certificates; validation.**

(1) Bonds or certificates, when validated under section 58-524, shall have stamped or written on the bond or certificate, by the proper officers of such contracting public body issuing them, a statement in substantially the following form: "This bond is one of a series of bonds which were validated by judgment of the District Court for . . . . . County, rendered on . . . . . 20. . . . .".

(2) A certified copy of the judgment or decree shall be received as evidence in any court in this state.

**Source:** Laws 1995, LB 830, § 25; Laws 2004, LB 813, § 27.

**58-526 Public body or taxing body; supplemental powers.**

In addition to any other provisions governing any public body or taxing body set forth in the Nebraska Redevelopment Act, for the purpose of aiding and cooperating in the planning, undertaking, or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body or taxing body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to a contracting public body;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places which it is otherwise empowered to undertake;

(4) Plan, replan, zone, or rezone any part of the public body or taxing body or make exceptions from building regulations and ordinances if such functions are of the character which the public body or taxing body is otherwise empowered to perform;

(5) Cause administrative and other services to be furnished to the contracting public body of the character which the public body or taxing body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by such public body or taxing body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment project;

(8) Lend, grant, or contribute funds to a contracting public body;

(9) Employ any funds belonging to or within the control of such public body or taxing body, including funds derived from the sale or furnishing of property, service, or facilities to a contracting public body, in the purchase of the bonds or other obligations of a contracting public body and, as the holder of such bonds or other obligations, exercise the rights connected with the bonds or obligations; and

(10) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a contracting public body respecting action to be taken by such public body or taxing body pursuant to any of the powers granted by the provisions of the act.

**Source:** Laws 1995, LB 830, § 26.



**58-527 Sale, conveyance, lease, or agreement; how made.**

Any sale, conveyance, lease, or agreement provided for in section 58-526 may be made by a public body or taxing body without appraisal, public notice, advertisement, or public bidding.

**Source:** Laws 1995, LB 830, § 27.

**58-528 Contracting public body; estimate of expenses; appropriations; bonds authorized.**

A contracting public body may, at such time as it may deem necessary, file with the governing body or governing bodies to which it relates an estimate of the amounts necessary to be appropriated by the governing body or governing bodies to defray the expense of the contracting public body arising under the Nebraska Redevelopment Act. Such governing body may appropriate from its general fund and place at the disposal of the contracting public body an amount sufficient to assist in defraying such expense. Any city or county located within the area of operation of the contracting public body or the designated blighted and substandard area may grant funds to a contracting public body for the purpose of aiding such contracting public body in carrying out any of its powers and functions under the act. To obtain funds for this purpose, such city or county may levy taxes and may issue and sell its bonds. Any bonds to be issued by such city or county pursuant to this section shall be issued in the manner and within the limitations, except as otherwise provided by the act, prescribed by the laws of this state for the issuance and authorization of bonds by a city or county for any public purpose.

**Source:** Laws 1995, LB 830, § 28.

**58-529 School districts; additional expenses; appropriations.**

Any school district impacted by a project approved under the Nebraska Redevelopment Act, the Invest Nebraska Act, or the Quality Jobs Act may file with the governing body an estimate of the amount of additional expenses of the school district as a result of the project which is in excess of amounts compensated by additional valuation or state aid. The governing body may appropriate funds to the school district to compensate for all or part of the impact.

**Source:** Laws 1995, LB 830, § 29; Laws 2001, LB 620, § 46.

**Cross References**

**Invest Nebraska Act**, see section 77-5501.

**Quality Jobs Act**, see section 77-4901.

**58-530 Presumption of compliance.**

Any instrument executed by a contracting public body and purporting to convey any right, title, or interest in any property under the Nebraska Redevelopment Act shall be conclusive evidence of compliance with the provisions of the act insofar as title or other interest of any bona fide purchasers, lessees, or other transferees of such property is concerned.

**Source:** Laws 1995, LB 830, § 30.

**58-531 Act; how construed.**

The Nebraska Redevelopment Act shall be full authority for the creation of or to act as a contracting public body by a city or cities and for the exercise of the powers of the act granted to a city or cities and to such contracting public bodies, and no action, proceeding, or election shall be required prior to the creation of or action by a contracting public body or to authorize the exercise of any of the powers granted in the act, except as specifically provided in the act, any provision of law or of any city charter or village law to the contrary notwithstanding.

No proceedings for the issuance of bonds of a contracting public body are required other than those required by the provisions of the act, and the provisions of all other laws and city charters, if any, relative to the terms and conditions for the issuance, payment, redemption, registration, sale, or delivery of bonds of public bodies, corporations, or political subdivisions of this state shall not be applicable to bonds issued by a contracting public body pursuant to the act.

Insofar as the provisions of the act are inconsistent with the provisions of any other law or of any city charter, if any, the provisions of the act shall be controlling.

**Source:** Laws 1995, LB 830, § 31.

**58-532 Act; when operative.**

The Nebraska Redevelopment Act becomes operative on February 1, 1995, and shall apply to all area applications and project applications filed on or after such date.

**Source:** Laws 1995, LB 830, § 32.

**58-533 Filing of applications; limitation.**

There shall be no area applications or project applications filed on or after February 1, 2000, without further authorization of the Legislature, except that all area applications, all project applications, and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.

**Source:** Laws 1995, LB 830, § 33; Laws 1997, LB 344, § 2.

**ARTICLE 6**

**NEBRASKA UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT**

Section

- 58-601. Repealed. Laws 2007, LB 136, § 11.
- 58-602. Repealed. Laws 2007, LB 136, § 11.
- 58-603. Repealed. Laws 2007, LB 136, § 11.
- 58-604. Repealed. Laws 2007, LB 136, § 11.
- 58-605. Repealed. Laws 2007, LB 136, § 11.
- 58-606. Repealed. Laws 2007, LB 136, § 11.
- 58-607. Repealed. Laws 2007, LB 136, § 11.
- 58-608. Repealed. Laws 2007, LB 136, § 11.
- 58-609. Repealed. Laws 2007, LB 136, § 11.
- 58-610. Act, how cited.
- 58-611. Definitions.
- 58-612. Standard of conduct in managing and investing institutional fund.
- 58-613. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

## Section

- 58-614. Delegation of management and investment functions.
- 58-615. Release or modification of restrictions on management, investment, or purpose.
- 58-616. Reviewing compliance.
- 58-617. Application to existing institutional funds.
- 58-618. Relation to Electronic Signatures in Global and National Commerce Act.
- 58-619. Uniformity of application and construction.

**58-601 Repealed. Laws 2007, LB 136, § 11.**

**58-602 Repealed. Laws 2007, LB 136, § 11.**

**58-603 Repealed. Laws 2007, LB 136, § 11.**

**58-604 Repealed. Laws 2007, LB 136, § 11.**

**58-605 Repealed. Laws 2007, LB 136, § 11.**

**58-606 Repealed. Laws 2007, LB 136, § 11.**

**58-607 Repealed. Laws 2007, LB 136, § 11.**

**58-608 Repealed. Laws 2007, LB 136, § 11.**

**58-609 Repealed. Laws 2007, LB 136, § 11.**

**58-610 Act, how cited.**

Sections 58-610 to 58-619 shall be known and be cited as the Nebraska Uniform Prudent Management of Institutional Funds Act.

**Source:** Laws 2007, LB136, § 1.

**58-611 Definitions.**

For purposes of the Nebraska Uniform Prudent Management of Institutional Funds Act:

(1) Charitable purpose means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) Endowment fund means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) Gift instrument means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) Institution means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) Institutional fund means a fund held by an institution exclusively for charitable purposes. The term does not include:

- (A) program-related assets;
- (B) a fund held for an institution by a trustee that is not an institution; or
- (C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) Program-related asset means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Source:** Laws 2007, LB136, § 2.

**58-612 Standard of conduct in managing and investing institutional fund.**

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

- (A) general economic conditions;
- (B) the possible effect of inflation or deflation;
- (C) the expected tax consequences, if any, of investment decisions or strategies;
- (D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of the act.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

**Source:** Laws 2007, LB136, § 3.

**58-613 Appropriation for expenditure or accumulation of endowment fund; rules of construction.**

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

- (6) other resources of the institution; and
- (7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only income, interest, dividends, or rents, issues, or profits, or to preserve the principal intact, or words of similar import:

- (1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

**Source:** Laws 2007, LB136, § 4.

**58-614 Delegation of management and investment functions.**

(a) Subject to any specific limitation set forth in a gift instrument or in law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than the Nebraska Uniform Prudent Management of Institutional Funds Act.

**Source:** Laws 2007, LB136, § 5.

**58-615 Release or modification of restrictions on management, investment, or purpose.**

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification

may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

- (1) the institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars;
- (2) more than twenty years have elapsed since the fund was established; and
- (3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

**Source:** Laws 2007, LB136, § 6.

#### **58-616 Reviewing compliance.**

Compliance with the Nebraska Uniform Prudent Management of Institutional Funds Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

**Source:** Laws 2007, LB136, § 7.

#### **58-617 Application to existing institutional funds.**

The Nebraska Uniform Prudent Management of Institutional Funds Act applies to institutional funds existing on or established after September 1, 2007. As applied to institutional funds existing on September 1, 2007, the act governs only decisions made or actions taken on or after that date.

**Source:** Laws 2007, LB136, § 8.

#### **58-618 Relation to Electronic Signatures in Global and National Commerce Act.**

The Nebraska Uniform Prudent Management of Institutional Funds Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1,

2007, but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

**Source:** Laws 2007, LB136, § 9.

#### **58-619 Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source:** Laws 2007, LB136, § 10.

### **ARTICLE 7**

#### **NEBRASKA AFFORDABLE HOUSING ACT**

##### Section

- 58-701. Act, how cited.
- 58-702. Legislative findings.
- 58-703. Affordable Housing Trust Fund; created; use.
- 58-704. Housing advisory committee; created; members; duties; meetings.
- 58-705. Department of Economic Development; Affordable Housing Trust Fund; duties.
- 58-706. Affordable Housing Trust Fund; eligible activities.
- 58-707. Assistance; qualified recipients.
- 58-708. Department of Economic Development; selection of projects to receive assistance; duties; recapture funds; when.
- 58-709. Rules and regulations.
- 58-710. Repealed. Laws 1998, LB 897, § 1.
- 58-711. Information on status of Affordable Housing Trust Fund; report; contents.

#### **58-701 Act, how cited.**

Sections 58-701 to 58-711 shall be known and may be cited as the Nebraska Affordable Housing Act.

**Source:** Laws 1996, LB 1322, § 11; Laws 1997, LB 864, § 8.

#### **58-702 Legislative findings.**

The Legislature finds that current economic conditions, lack of available affordable housing, federal housing policies that have placed an increasing burden on the state, and declining resources at all levels of government adversely affect the ability of Nebraska's citizens to obtain safe, decent, and affordable housing. Lack of affordable housing also affects the ability of communities to maintain and develop viable and stable economies.

Furthermore, the Legislature finds that impediments exist to the construction and rehabilitation of affordable housing. Local codes and state statutes have an important effect on housing's affordability by placing increased costs on developers. Financing affordable housing, especially in rural areas and smaller communities, is becoming increasingly difficult. In addition, existing dilapidated housing stock and industrial buildings are detrimental to new affordable housing development and the general health and safety of people living and working in or around such places. An affordable housing trust fund would assist all Nebraska communities in financing affordable housing projects and other projects which make the community safer for residents.

To enhance the economic development of the state and to provide for the general prosperity of all of Nebraska's citizens, it is in the public interest to



assist in the provision of safe, decent, and affordable housing in all areas of the state. The establishment of the Nebraska Affordable Housing Act will assist in creating conditions favorable to meeting the affordable housing needs of the state.

**Source:** Laws 1996, LB 1322, § 12; Laws 2011, LB388, § 10.

**58-703 Affordable Housing Trust Fund; created; use.**

The Affordable Housing Trust Fund is created. The fund shall receive money pursuant to section 76-903 and may include revenue from sources recommended by the housing advisory committee established in section 58-704, appropriations from the Legislature, transfers authorized by the Legislature, grants, private contributions, repayment of loans, and all other sources. The Department of Economic Development as part of its comprehensive housing affordability strategy shall administer the Affordable Housing Trust Fund.

Transfers may be made from the Affordable Housing Trust Fund to the General Fund, the Behavioral Health Services Fund, the Lead-Based Paint Hazard Control Cash Fund, the Rural Workforce Housing Investment Fund, and the Site and Building Development Fund at the direction of the Legislature.

The State Treasurer shall transfer fifty-eight thousand one hundred eighty-eight dollars from the Affordable Housing Trust Fund to the General Fund on or before September 15, 2019, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 1996, LB 1322, § 13; Laws 1997, LB 864, § 9; Laws 2004, LB 1083, § 100; Laws 2005, LB 40, § 1; Laws 2011, LB388, § 11; Laws 2012, LB969, § 6; Laws 2013, LB199, § 24; Laws 2013, LB214, § 9; Laws 2017, LB518, § 10; Laws 2018, LB945, § 13; Laws 2019, LB86, § 6.

**58-704 Housing advisory committee; created; members; duties; meetings.**

(1) The Legislature finds that the development of operational rules and regulations and an appropriate source of funding is critical to the success of the Affordable Housing Trust Fund. A housing advisory committee is created to address issues related to the operation of the fund and to recommend a plan to coordinate low-income housing efforts throughout the state. On or before December 15, 1996, the committee shall recommend to the Legislature and the Governor the most viable revenue source or sources for the funding of the fund. The committee shall also recommend for public review proposals for rules and regulations to carry out the fund, including time limitations for the use of financial assistance and limitations on the administrative costs of proposed projects. For administrative purposes, the committee shall be located in the Department of Economic Development.

(2) The committee shall consist of fifteen members who represent a wide range of interests associated with the development and sales of housing. The Governor shall appoint the members and a chairperson and vice-chairperson from the members. The committee may be a committee or council previously created by statute or executive order of the Governor. The Governor shall attempt to have the nonprofit and for-profit communities equally represented on the advisory committee.

(3) The committee shall meet at the call of the chairperson or a majority of the members. The chairperson shall call such meetings as he or she determines necessary to fulfill the duties of the committee. A quorum shall be one-half of the members.

**Source:** Laws 1996, LB 1322, § 14.

**58-705 Department of Economic Development; Affordable Housing Trust Fund; duties.**

The Department of Economic Development shall use the Affordable Housing Trust Fund to finance loans, grants, subsidies, credit enhancements, and other financial assistance for community affordable housing projects and for expenses of the department as appropriated by the Legislature for administering the fund.

**Source:** Laws 1996, LB 1322, § 15.

**58-706 Affordable Housing Trust Fund; eligible activities.**

The following activities are eligible for assistance from the Affordable Housing Trust Fund:

- (1) New construction, rehabilitation, or acquisition of housing to assist low-income and very low-income families;
- (2) Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;
- (3) Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;
- (4) Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;
- (5) Mortgage insurance guarantees for eligible projects;
- (6) Acquisition of housing units for the purpose of preservation of housing to assist low-income or very low-income families;
- (7) Projects making affordable housing more accessible to families with elderly members or members who have disabilities;
- (8) Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;
- (9) Infrastructure projects necessary for the development of affordable housing;
- (10) Downpayment and closing cost assistance;
- (11) Demolition of existing vacant, condemned, or obsolete housing or industrial buildings or infrastructure;
- (12) Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward:
  - (a) Preparing potential home buyers to purchase affordable housing and postpurchase education;

(b) Target audiences eligible to utilize the services of housing assistance groups or organizations; and

(c) Developers interested in the rehabilitation, acquisition, or construction of affordable housing;

(13) Support for efforts to improve programs benefiting homeless youth;

(14) Vocational training in the housing and construction trades industries by nonprofit groups; and

(15) Weatherization and solar or other energy improvements to make utilities for housing more affordable.

**Source:** Laws 1996, LB 1322, § 16; Laws 2004, LB 1083, § 101; Laws 2005, LB 40, § 2; Laws 2011, LB388, § 12; Laws 2011, LB413, § 1; Laws 2013, LB199, § 25; Laws 2021, LB384, § 8.  
Effective date April 27, 2021.

**58-707 Assistance; qualified recipients.**

Organizations which may receive assistance under the Nebraska Affordable Housing Act are governmental subdivisions, local housing authorities, community action agencies, community-based or neighborhood-based or reservation-based nonprofit organizations, and for-profit entities working in conjunction with one of the other eligible organizations. For-profit entities that are eligible under this section shall be required to provide, or cause to be provided, matching funds for the eligible activity in an amount determined by the Department of Economic Development, which amount shall be at least equal to ten percent of the amount of assistance provided by the Affordable Housing Trust Fund. Political subdivisions, local housing authorities, community action agencies, and community-based, neighborhood-based, and reservation-based nonprofit organizations shall not be required to provide, or cause to be provided, such matching funds. Nothing in the act shall be construed to allow individuals to receive direct loans from the Affordable Housing Trust Fund.

**Source:** Laws 1996, LB 1322, § 17; Laws 1997, LB 864, § 10; Laws 2019, LB86, § 7.

**58-708 Department of Economic Development; selection of projects to receive assistance; duties; recapture funds; when.**

(1) During each calendar year in which funds are available from the Affordable Housing Trust Fund for use by the Department of Economic Development, the department shall make its best efforts to allocate not less than thirty percent of such funds to each congressional district. The department shall announce a grant and loan application period of at least ninety days duration for all projects. In selecting projects to receive trust fund assistance, the department shall develop a qualified allocation plan and give first priority to financially viable projects that serve the lowest income occupants for the longest period of time. The qualified allocation plan shall:

(a) Set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and

(b) Give first priority in allocating trust fund assistance among selected projects to those projects which are located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act or an opportunity zone designated pursuant to the federal Tax Cuts and Jobs Act, Public Law 115-97, serve the lowest income occupant, are located in an area that has been declared an extremely blighted area under section 18-2101.02, and are obligated to serve qualified occupants for the longest period of time.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

(3) The department may recapture any funds which were allocated to a qualified recipient for an eligible project through an award agreement if such funds were not utilized for eligible costs within the time of performance under the agreement and are therefor no longer obligated to the project. The recaptured funds shall be credited to the Affordable Housing Trust Fund.

**Source:** Laws 1996, LB 1322, § 18; Laws 2005, LB 40, § 3; Laws 2011, LB388, § 13; Laws 2014, LB800, § 5; Laws 2014, LB906, § 17; Laws 2015, LB457, § 1; Laws 2017, LB217, § 3; Laws 2019, LB86, § 8; Laws 2019, LB87, § 1.

**Cross References**

**Enterprise Zone Act**, see section 13-2101.01.

**58-709 Rules and regulations.**

The Department of Economic Development, in consultation with the Nebraska Investment Finance Authority and the housing advisory committee established in section 58-704, shall adopt and promulgate rules and regulations to carry out the Nebraska Affordable Housing Act. The department shall monitor programs to see that only qualified individuals and families are occupying projects funded by the Affordable Housing Trust Fund.

**Source:** Laws 1996, LB 1322, § 19.

**58-710 Repealed. Laws 1998, LB 897, § 1.**

**58-711 Information on status of Affordable Housing Trust Fund; report; contents.**

(1) The Department of Economic Development shall submit, as part of the department's annual status report under section 81-1201.11, the following information regarding the Affordable Housing Trust Fund: (a) The applications funded during the previous calendar year; (b) the applications funded in previous years; (c) the identity of the organizations receiving funds; (d) the location of each project; (e) the amount of funding provided to each project; (f) the amount of funding leveraged as a result of each project; (g) the number of units of housing created by each project and the occupancy rate; (h) the expected cost of rent or monthly payment of those units; (i) the projected number of new employees and community investment as a result of each project; (j) the amount of revenue deposited into the Affordable Housing Trust Fund pursuant to section 76-903; (k) the total amount of funds for which applications were received during the previous calendar year, the year-end fund

balance, and, if all available funds have not been committed, an explanation of the reasons why all such funds have not been so committed; (l) the amount of appropriated funds actually expended by the department for the previous calendar year; (m) the department's current budget for administration of the Nebraska Affordable Housing Act and the department's planned use and distribution of funds, including details on the amount of funds to be expended on projects and the amount of funds to be expended by the department for administrative purposes; and (n) project summaries, including the applicant municipality, project description, grant amount requested, amount and type of matching funds, and reasons for approval or denial for every application seeking funds during the previous calendar year.

(2) The status report shall contain no information that is protected by state or federal confidentiality laws.

**Source:** Laws 1997, LB 864, § 7; Laws 2011, LB404, § 3; Laws 2013, LB214, § 10; Laws 2019, LB86, § 9.

## ARTICLE 8

### NEBRASKA EDUCATIONAL, HEALTH, CULTURAL, AND SOCIAL SERVICES FINANCE AUTHORITY ACT

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**58-801 Act, how cited.**

Sections 58-801 to 58-866 shall be known and may be cited as the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 2; Laws 1993, LB 465, § 2; R.S.1943, (1994), § 79-2902; Laws 1995, LB 5, § 2; R.S.1943, (2008), § 85-1701; Laws 2013, LB170, § 1; Laws 2019, LB224, § 1.

**58-802 Legislative findings.**

The Legislature finds and declares that:

(1) For the benefit of the people of the State of Nebraska, the increase of their commerce, welfare, and prosperity, and the fostering, protection, and improvement of their health and living conditions, it is essential that this and future generations of youth be given the greatest opportunity to learn and to fully develop their intellectual and mental capacities and skills and that there be encouraged, promoted, and supported adequate health, social, cultural, and emergency services for the general welfare of, care of, and assistance to the people of the state;

(2) To achieve these ends it is of the utmost importance and in the public interest that private institutions of higher education within the state be provided with appropriate additional means of assisting such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills, that private health care institutions and private social services institutions within the state be provided with appropriate additional means of caring for and protecting the public health and welfare, and that private cultural institutions within the state be provided with appropriate additional means of assisting with the preservation and promotion of the cultural and artistic enrichment of the people of this state;

(3) It is the purpose of the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act to provide a measure of assistance and an alternative method of enabling private institutions of higher education, private health care institutions, private cultural institutions, and private social services institutions in the state to finance the acquisition, construction, improvement, equipment, and renovation of needed educational, health care, cultural, and social services facilities and structures and to refund, refinance, or reimburse outstanding indebtedness incurred by them or advances made by them, including advances from an endowment or any other similar fund, for the acquisition, construction, improvement, equipment, or renovation of needed educational, health care, cultural, and social services facilities and structures;

(4) The financing and refinancing of educational, health care, cultural, and social services facilities, through means other than the appropriation of public funds to private institutions of higher education, private health care institutions, private cultural institutions, and private social services institutions, as described in the act, is a valid public purpose;

(5) The availability of improved access to health profession schools will benefit the people of the State of Nebraska and improve their health, welfare, and living conditions;

(6) The establishment of a health education loan program, with the proceeds of bonds to be used for the purchase or making of loans to students or certain former students of health profession schools, will improve the access to such schools and assist such persons in meeting the expenses incurred in availing themselves of health education opportunities; and

(7) The establishment of a program to assist private institutions of higher education to provide loans to their full-time students pursuing an academic degree will improve access to higher education and contribute to the health, welfare, and living conditions in Nebraska.

**Source:** Laws 1981, LB 321, § 1; Laws 1983, LB 159, § 1; Laws 1993, LB 465, § 1; R.S.1943, (1994), § 79-2901; Laws 1995, LB 5, § 1; R.S.1943, (2008), § 85-1702; Laws 2013, LB170, § 2; Laws 2019, LB224, § 2.

#### **58-803 Definitions, where found.**

For purposes of the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, unless the context otherwise requires, the definitions found in sections 58-804 to 58-812 shall apply.

**Source:** Laws 1981, LB 321, § 3; Laws 1983, LB 159, § 14; Laws 1993, LB 465, § 3; R.S.1943, (1994), § 79-2903; Laws 1995, LB 5, § 3; R.S.1943, (2008), § 85-1703; Laws 2013, LB170, § 3; Laws 2019, LB224, § 3.

**58-804 Authority, defined.**

Authority means the Nebraska Educational, Health, Cultural, and Social Services Finance Authority created by the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act or any board, body, commission, department, or office succeeding to the principal functions thereof or to whom the powers conferred upon such authority by the act are given by law.

**Source:** Laws 1981, LB 321, § 4; Laws 1993, LB 465, § 4; R.S.1943, (1994), § 79-2904; Laws 1995, LB 5, § 4; R.S.1943, (2008), § 85-1704; Laws 2013, LB170, § 4; Laws 2019, LB224, § 4.

**58-805 Bonds, defined.**

Bonds means bonds, notes, or other obligations of the authority issued under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, including refunding bonds, notwithstanding that the same may be secured by the full faith and credit of an eligible institution or any other lawfully pledged security of an eligible institution.

**Source:** Laws 1981, LB 321, § 8; Laws 1993, LB 465, § 6; R.S.1943, (1994), § 79-2908; Laws 1995, LB 5, § 5; R.S.1943, (2008), § 85-1705; Laws 2013, LB170, § 5; Laws 2019, LB224, § 5.

**58-806 Cost, defined.**

Cost as applied to a project or any portion thereof financed under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act means all or any part of the cost of acquisition, construction, improvement, equipment, and renovation of all land, buildings, or structures including the cost of machinery and equipment; finance charges; interest prior to, during, and after completion of such construction for a reasonable period as determined by the authority; reserves for principal and interest; extensions, enlargements, additions, replacements, renovations, and improvements; engineering, financial, and legal services; plans, specifications, studies, surveys, estimates of cost of revenue, administrative expenses, bond issuance costs, and expenses necessary or incidental to determining the feasibility or practicability of constructing the project; and such other expenses as the authority determines may be necessary or incidental to the acquisition, construction, improvement, equipment, and renovation of the project, the financing of such acquisition, construction, improvement, equipment, and renovation, and the placing of the project in operation.

**Source:** Laws 1981, LB 321, § 7; Laws 1993, LB 465, § 5; R.S.1943, (1994), § 79-2907; Laws 1995, LB 5, § 6; R.S.1943, (2008), § 85-1706; Laws 2013, LB170, § 6; Laws 2019, LB224, § 6.

**58-807 Eligible institution, defined.**

Eligible institution means a private institution of higher education, a private health care institution, a private cultural institution, or a private social services institution.

**Source:** Laws 2013, LB170, § 7; Laws 2019, LB224, § 7.

**58-807.01 Private cultural institution, defined.**



Private cultural institution means any private not-for-profit corporation or institution that (1) has a primary purpose of promoting cultural education or development, such as a museum or related visual arts center, performing arts facility, or facility housing, incubating, developing, or promoting art, music, theater, dance, zoology, botany, natural history, cultural history, or the sciences, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxation under section 501(a) of the code, (3) is located within this state and is not owned or controlled by the state or any municipality, district, or other political subdivision, agency, or instrumentality thereof, and (4) does not violate any state or federal law against discrimination.

**Source:** Laws 2019, LB224, § 8.

**58-808 Private health care institution, defined.**

Private health care institution means any private not-for-profit corporation or institution that (1) is licensed under the Health Care Facility Licensure Act, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxation under section 501(a) of the Internal Revenue Code, (3) is located within this state and is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, and (4) does not violate any Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

**Source:** Laws 2013, LB170, § 8.

**Cross References**

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

**58-809 Private institution of higher education, defined.**

Private institution of higher education means a not-for-profit educational institution located within this state which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, which is authorized by law to provide a program of education beyond the high school level, and which:

- (1) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;
- (2) Provides an educational program for which it awards a bachelor's degree; provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor's degree or its equivalent, for which it awards a postgraduate degree; provides a program of not less than two years in length which is acceptable for full credit toward a bachelor's degree; or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, research, medicine, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;
- (3) Is accredited by an accrediting agency or association or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; and

(4) Has a student admissions policy that does not violate any other Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

**Source:** Laws 1981, LB 321, § 9; R.S.1943, (1994), § 79-2909; Laws 1995, LB 5, § 7; Laws 1998, LB 303, § 1; R.S.1943, (2008), § 85-1707; Laws 2013, LB170, § 9; Laws 2021, LB528, § 12.  
Operative date August 28, 2021.

**58-810 Private social services institution, defined.**

Private social services institution means any private not-for-profit corporation or institution that (1) provides health, safety, and welfare assistance, including emergency, social, housing, and related support services, to members of the general public in the state, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxation under section 501(a) of the Internal Revenue Code, (3) is located within this state and is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, and (4) does not violate any Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

**Source:** Laws 2013, LB170, § 10.

**58-811 Project, defined.**

(1) Project means any property located within the state that may be used or will be useful in connection with the instruction, feeding, recreation, or housing of students, the provision of health care services to members of the general public, the provision of cultural services to members of the general public, the provision of social services to members of the general public, the conducting of research, administration, or other work of an eligible institution, or any combination of the foregoing. Project includes, but is not limited to, an academic facility, administrative facility, agricultural facility, assembly hall, assisted-living facility, athletic facility, auditorium, campus, communication facility, congregate care housing, emergency services facility, exhibition hall, health care facility, health service institution, hospital, housing for faculty and other staff, instructional facility, laboratory, library, maintenance facility, medical clinic, medical services facility, museum, nursing or skilled nursing services facility, offices, parking area, personal care services facility, physical educational facility, recreational facility, research facility, senior, retirement, or home care services facility, social services facility, stadium, storage facility, student facility, student health facility, student housing, student union, theatre, or utility facility.

(2) Project also means and includes the refunding or refinancing of outstanding obligations, mortgages, or advances, including advances from an endowment or similar fund, originally issued, made, or given by the eligible institution to finance the cost of a project or projects, and including the financing of eligible swap termination payments, whenever the authority finds that such refunding or refinancing is in the public interest and either:

(a) Alleviates a financial hardship upon the eligible institution;

(b) Results in a lesser cost of education, health care, housing, cultural services, or social and related support services to the eligible institution's students, patients, residents, clients, and other general public consumers; or

(c) Enables the eligible institution to offer greater security for the financing of a new project or projects or to effect savings in interest costs or more favorable amortization terms.

**Source:** Laws 1981, LB 321, § 5; R.S.1943, (1994), § 79-2905; Laws 1995, LB 5, § 8; R.S.1943, (2008), § 85-1708; Laws 2013, LB170, § 11; Laws 2019, LB224, § 9.

**58-812 Property, defined.**

Property means the real estate upon which a project is or will be located, including equipment, machinery, and other similar items necessary or convenient for the operation of the project in the manner for which its use is intended, but not including such items as fuel, supplies, or other items that are customarily deemed to result in a current operation charge. Property does not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship nor any property which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis, or other professional persons in the field of religion.

**Source:** Laws 1981, LB 321, § 6; R.S.1943, (1994), § 79-2906; Laws 1995, LB 5, § 9; R.S.1943, (2008), § 85-1709; Laws 2013, LB170, § 12.

**58-813 Nebraska Educational, Health, Cultural, and Social Services Finance Authority; created.**

There is hereby created a body politic and corporate to be known as the Nebraska Educational, Health, Cultural, and Social Services Finance Authority. The authority is constituted a public instrumentality, and the exercise by the authority of the powers conferred by the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act shall be deemed and held to be the performance of an essential public function of the state.

**Source:** Laws 1981, LB 321, § 10; Laws 1993, LB 465, § 7; R.S.1943, (1994), § 79-2910; Laws 1995, LB 5, § 10; R.S.1943, (2008), § 85-1710; Laws 2013, LB170, § 13; Laws 2019, LB224, § 10.

**58-814 Authority; members; qualifications; appointment; terms; removal.**

(1) The authority shall consist of seven members, to be appointed by the Governor, who shall be residents of the state, not more than four of whom shall be members of the same political party.

(2) Of the seven members:

(a) At least one shall be a trustee, director, officer, or employee of one or more private institutions of higher education in the state;

(b) At least one shall be a person having a favorable reputation for skill, knowledge, and experience in the field of finance;

(c) At least one shall be a person experienced in and having a favorable reputation for skill, knowledge, and experience in the educational building construction field;

(d) At least one shall be a person experienced in and having a favorable reputation in the field of public accounting;

(e) After the initial appointment provided for in subdivision (3)(a) of this section is made, at least one shall be a trustee, director, officer, or employee of one or more private health care institutions in the state; and

(f) After the initial appointment provided for in subdivision (3)(b) of this section is made, at least one shall be a trustee, director, officer, or employee of one or more private social services institutions in the state.

(3) The initial appointments of the members described in subdivisions (2)(e) and (2)(f) of this section shall be made as follows:

(a) For the first member whose term expires after September 6, 2013, and who is not the sole member described in subdivision (2)(a), (2)(b), (2)(c), or (2)(d) of this section, the Governor shall appoint a successor who meets the qualifications described in subdivision (2)(e) of this section; and

(b) For the second member whose term expires after September 6, 2013, and who is not the sole member described in subdivision (2)(a), (2)(b), (2)(c), or (2)(d) of this section, the Governor shall appoint a successor who meets the qualifications described in subdivision (2)(f) of this section.

(4) The members of the authority first appointed shall serve for terms expiring as follows: One on December 31, 1982; two on December 31, 1983; two on December 31, 1984; and two on December 31, 1985, respectively, the term of each such member to be designated by the Governor. Upon the expiration of the term of any member, his or her successor shall be appointed for a term of four years and until a successor has been appointed and qualified. The Governor shall fill any vacancy for the remainder of the unexpired term. Any member of the authority may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless such notice and hearing shall be expressly waived in writing by the accused member. Each member shall be eligible for reappointment to a successive term but shall be declared ineligible for three consecutive full terms.

**Source:** Laws 1981, LB 321, § 11; Laws 1984, LB 644, § 1; R.S.1943, (1994), § 79-2911; Laws 1995, LB 5, § 11; R.S.1943, (2008), § 85-1711; Laws 2013, LB170, § 14.

**58-815 Authority; officers; executive director; compensation; receive contributions.**

Each year the authority shall elect one of its members as chairperson and another member as vice-chairperson. It may appoint an executive director and assistant executive director, who shall not be members of the authority but who shall serve at the pleasure of the authority. An assistant executive director shall perform the duties of the executive director in the event of the absence or inability to act of the executive director. They shall receive such compensation as shall be fixed by the authority. The authority may receive contributions to fund any of the expenses of the authority from private donors, including any one or more of the eligible institutions or any one or more associations representing the eligible institutions.

**Source:** Laws 1981, LB 321, § 12; Laws 1993, LB 465, § 8; R.S.1943, (1994), § 79-2912; Laws 1995, LB 5, § 12; R.S.1943, (2008), § 85-1712; Laws 2013, LB170, § 15.

**58-816 Authority; keep records and accounts; seal; certified copies.**

The executive director, assistant executive director, or any other person designated by resolution of the authority shall keep records and accounts of all proceedings and financial dealings of the authority, shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal, and shall be custodian of all funds of the authority. The executive director, assistant executive director, or other designated person may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

**Source:** Laws 1981, LB 321, § 13; R.S.1943, (1994), § 79-2913; Laws 1995, LB 5, § 13; R.S.1943, (2008), § 85-1713; Laws 2013, LB170, § 16.

**58-817 Authority; quorum; actions; vacancy; effect; meetings.**

Four members of the authority shall constitute a quorum. The affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. Members of the authority may participate in a regular or special meeting of the authority by virtual conferencing as long as the chairperson or vice-chairperson conducts the meeting at a location where the public is able to participate by attendance at that location and the virtual conferencing otherwise conforms to the requirements of subsection (2) of section 84-1411.

**Source:** Laws 1981, LB 321, § 14; Laws 1984, LB 644, § 2; Laws 1993, LB 465, § 9; R.S.1943, (1994), § 79-2914; Laws 1995, LB 5, § 14; R.S.1943, (2008), § 85-1714; Laws 2013, LB170, § 17; Laws 2019, LB224, § 11; Laws 2021, LB83, § 7.  
Effective date April 22, 2021.

**58-818 Authority; officers, members, and employees; surety bond requirements.**

Before the issuance of any bonds under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, the chairperson, vice-chairperson, executive director, and assistant executive director, if any, and any other member of the authority authorized by resolution of the authority to handle funds or sign checks of the authority shall execute a surety bond in such amount as a majority of the members of the authority determine, or alternatively, the chairperson of the authority shall execute a blanket bond effecting such coverage. Each surety bond shall be conditioned upon the faithful performance of the duties of the office or offices covered and shall be executed by a surety company authorized to transact business in this state, and the cost of each such surety bond shall be paid by the authority.

**Source:** Laws 1981, LB 321, § 15; Laws 1993, LB 465, § 10; R.S.1943, (1994), § 79-2915; Laws 1995, LB 5, § 15; R.S.1943, (2008), § 85-1715; Laws 2013, LB170, § 18; Laws 2019, LB224, § 12.

**58-819 Authority; members; expenses.**

The members of the authority shall receive no compensation for the performance of their duties as members, but each such member shall be reimbursed for expenses while engaged in the performance of such duties as provided in sections 81-1174 to 81-1177 from any funds legally available therefor.

**Source:** Laws 1981, LB 321, § 16; R.S.1943, (1994), § 79-2916; Laws 1995, LB 5, § 16; R.S.1943, (2008), § 85-1716; Laws 2013, LB170, § 19; Laws 2020, LB381, § 52.

**58-820 Authority member or employee; conflict of interest; abstention.**

Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer, or employee of any educational institution, health care institution, cultural institution, social services institution, financial institution, commercial bank or trust company, architecture firm, insurance company, or any firm, person, or corporation to serve as a member of the authority, but such trustee, director, officer, or employee shall abstain from any deliberation or action by the authority when the business affiliation of any such trustee, director, officer, or employee is involved. The executive director may serve less than full time. If the executive director serves less than full time, his or her other employment, if any, shall be reviewed by the members of the authority for potential conflicts of interest and whether such other employment would prevent the executive director from fully discharging his or her duties. No member of the authority may be a representative of a bank, investment banking firm, or other financial institution that underwrites the bonds of the authority.

**Source:** Laws 1981, LB 321, § 17; R.S.1943, (1994), § 79-2917; Laws 1995, LB 5, § 17; R.S.1943, (2008), § 85-1717; Laws 2013, LB170, § 20; Laws 2019, LB224, § 13.

**58-821 Authority; purpose.**

The purpose of the authority shall be to assist eligible institutions in the acquisition, construction, improvement, equipment, renovation, financing, and refinancing of projects and to administer and operate the Nebraska Health Education Assistance Loan Program as provided in sections 58-857 to 58-862 and the Nebraska Student Loan Assistance Program as provided in sections 58-863 to 58-865.

**Source:** Laws 1981, LB 321, § 18; Laws 1983, LB 159, § 3; Laws 1993, LB 465, § 11; R.S.1943, (1994), § 79-2918; Laws 1995, LB 5, § 18; R.S.1943, (2008), § 85-1718; Laws 2013, LB170, § 21.

**58-822 Authority; perpetual succession; bylaws.**

The authority shall have perpetual succession as a body politic and corporate and may adopt bylaws for the regulation of its affairs and the conduct of its business.

**Source:** Laws 1981, LB 321, § 19; R.S.1943, (1994), § 79-2919; Laws 1995, LB 5, § 19; R.S.1943, (2008), § 85-1719; Laws 2013, LB170, § 22.

**58-823 Authority; adopt seal.**

The authority may adopt an official seal and alter the same at its pleasure.

**Source:** Laws 1981, LB 321, § 20; R.S.1943, (1994), § 79-2920; Laws 1995, LB 5, § 20; R.S.1943, (2008), § 85-1720; Laws 2013, LB170, § 23.

**58-824 Authority; office; location.**

The authority may maintain an office at such place or places within Nebraska as it may designate.

**Source:** Laws 1981, LB 321, § 21; R.S.1943, (1994), § 79-2921; Laws 1995, LB 5, § 21; R.S.1943, (2008), § 85-1721; Laws 2013, LB170, § 24.

**58-825 Authority; sue and be sued.**

The authority may sue and be sued in its own name.

**Source:** Laws 1981, LB 321, § 22; R.S.1943, (1994), § 79-2922; Laws 1995, LB 5, § 22; R.S.1943, (2008), § 85-1722; Laws 2013, LB170, § 25.

**58-826 Authority; powers over project.**

The authority may determine the location and character of any project to be financed or refinanced under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act and acquire, construct, reconstruct, improve, equip, remodel, renovate, replace, maintain, repair, operate, lease as lessee or lessor, and regulate the same. The authority may also enter into contracts for any or all of such purposes, enter into contracts for the management and operation of a project, and designate an eligible institution as its agent to determine the location and character of a project undertaken by such eligible institution under the act and, as the agent of the authority, to acquire, construct, reconstruct, improve, equip, remodel, renovate, replace, maintain, repair, operate, lease as lessee or lessor, and regulate the same and, as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project.

**Source:** Laws 1981, LB 321, § 23; Laws 1993, LB 465, § 12; R.S.1943, (1994), § 79-2923; Laws 1995, LB 5, § 23; R.S.1943, (2008), § 85-1723; Laws 2013, LB170, § 26; Laws 2019, LB224, § 14.

**58-827 Authority; issuance of bonds authorized.**

The authority may issue bonds of the authority for any of its corporate purposes and fund or refund the same pursuant to the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 24; Laws 1993, LB 465, § 13; R.S.1943, (1994), § 79-2924; Laws 1995, LB 5, § 24; R.S.1943, (2008), § 85-1724; Laws 2013, LB170, § 27; Laws 2019, LB224, § 15.

**58-828 Authority; charge for services.**

The authority may charge and collect rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and contract with any person, partnership, limited liability company, association, or corporation or other body public or private, except

that the authority shall have no jurisdiction over rates, rents, fees, and charges established by an eligible institution for its students, patients, residents, clients, or other consumers other than to require that such rates, rents, fees, and charges by such eligible institution be sufficient to discharge such institution's obligation to the authority.

**Source:** Laws 1981, LB 321, § 25; Laws 1993, LB 121, § 520; R.S.1943, (1994), § 79-2925; Laws 1995, LB 5, § 25; R.S.1943, (2008), § 85-1725; Laws 2013, LB170, § 28.

**58-829 Authority; rules and regulations for use of project; designate agent.**

The authority may establish rules and regulations for the use of a project or any portion thereof and designate an eligible institution as its agent to establish rules and regulations for the use of a project undertaken by such eligible institution.

**Source:** Laws 1981, LB 321, § 26; R.S.1943, (1994), § 79-2926; Laws 1995, LB 5, § 26; R.S.1943, (2008), § 85-1726; Laws 2013, LB170, § 29.

**58-830 Authority; personnel.**

The authority may employ consulting engineers, architects, attorneys, accountants, trustees, construction and finance experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and fix their compensation.

**Source:** Laws 1981, LB 321, § 27; R.S.1943, (1994), § 79-2927; Laws 1995, LB 5, § 27; R.S.1943, (2008), § 85-1727; Laws 2013, LB170, § 30.

**58-831 Authority; receive loans, grants, and contributions.**

The authority may receive and accept from any source loans or grants for or in aid of the acquisition, construction, improvement, equipment, or renovation of a project or any portion thereof, and receive and accept from any source loans, grants, aid, or contributions of money, property, labor, or other things of value, to be held, used, and applied only for the purpose for which such loans, grants, aid, or contributions are made.

**Source:** Laws 1981, LB 321, § 28; R.S.1943, (1994), § 79-2928; Laws 1995, LB 5, § 28; R.S.1943, (2008), § 85-1728; Laws 2013, LB170, § 31.

**58-832 Authority; mortgage of certain property.**

The authority may mortgage all or any portion of any project or any other facilities conveyed to the authority for such purpose and the site or sites thereof, whether presently owned or subsequently acquired, for the benefit of the holders of the bonds of the authority issued to finance such project or any portion thereof or issued to refund or refinance outstanding indebtedness or to reimburse an endowment or any similar fund of an eligible institution as permitted by the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 29; Laws 1993, LB 465, § 14; R.S.1943, (1994), § 79-2929; Laws 1995, LB 5, § 29; R.S.1943, (2008), § 85-1729; Laws 2013, LB170, § 32; Laws 2019, LB224, § 16.



**58-833 Authority; loans authorized; limitation.**

The authority may make loans to any eligible institution for the cost of any project or in anticipation of the receipt of tuition or other revenue by the eligible institution in accordance with an agreement between the authority and such eligible institution, except that (1) no such loan shall exceed the total cost of such project as determined by such eligible institution and approved by the authority and (2) any loan made in anticipation of the receipt of tuition or other revenue shall not exceed the anticipated amount of tuition or other revenue to be received by the eligible institution in the one-year period following the date of such loan.

**Source:** Laws 1981, LB 321, § 30; R.S.1943, (1994), § 79-2930; Laws 1995, LB 5, § 30; Laws 2003, LB 107, § 1; R.S.1943, (2008), § 85-1730; Laws 2013, LB170, § 33.

**58-834 Authority; issue bonds; make loans; conditions.**

The authority may issue bonds and make loans to an eligible institution and refund or reimburse outstanding obligations, mortgages, or advances, including advances from an endowment or any similar fund, issued, made, or given by such eligible institution for the cost of a project, including the power to issue bonds and make loans to an eligible institution to refinance indebtedness incurred or to reimburse advances made for projects undertaken prior thereto whenever the authority has received a written letter of intent to underwrite, place, or purchase the bonds from a financial institution having the powers of an investment bank, commercial bank, or trust company and finds that such financing or refinancing is in the public interest, and either: (1) Alleviates a financial hardship upon the eligible institution; (2) results in a lesser cost of education, health care services, cultural services, or social services; or (3) enables the eligible institution to offer greater security for a loan or loans to finance a new project or projects or to effect savings in interest costs or more favorable amortization terms.

**Source:** Laws 1981, LB 321, § 31; R.S.1943, (1994), § 79-2931; Laws 1995, LB 5, § 31; R.S.1943, (2008), § 85-1731; Laws 2013, LB170, § 34; Laws 2019, LB224, § 17.

**58-835 Authority; administrative costs; apportionment.**

The authority may charge to and equitably apportion among participating eligible institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred by the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 32; Laws 1993, LB 465, § 15; R.S.1943, (1994), § 79-2932; Laws 1995, LB 5, § 32; R.S.1943, (2008), § 85-1732; Laws 2013, LB170, § 35; Laws 2019, LB224, § 18.

**58-836 Authority; general powers; joint projects.**

The authority may do all things necessary or convenient to carry out the purposes of the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act.

In carrying out the purposes of the act, the authority may undertake a project for two or more eligible institutions jointly, or for any combination thereof, and

thereupon all other provisions of the act shall apply to and be for the benefit of the authority and such joint participants.

**Source:** Laws 1981, LB 321, § 33; Laws 1993, LB 465, § 16; R.S.1943, (1994), § 79-2933; Laws 1995, LB 5, § 33; R.S.1943, (2008), § 85-1733; Laws 2013, LB170, § 36; Laws 2019, LB224, § 19.

**58-837 Authority; combine and substitute projects; bonds; additional series.**

Notwithstanding any other provision contained in the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, the authority may combine for financing purposes, with the consent of all of the eligible institutions which are involved, the project or projects and some or all future projects of any eligible institutions, but the money set aside in any fund or funds pledged for any series or issue of bonds shall be held for the sole benefit of such series or issue separate and apart from any money pledged for any other series or issue of bonds of the authority. To facilitate the combining of projects, bonds may be issued in series under one or more resolutions or trust indentures and be fully open end, thus providing for the unlimited issuance of additional series, or partially open end, limited as to additional series, all in the discretion of the authority. Notwithstanding any other provision of the act to the contrary, the authority may, in its discretion, permit an eligible institution to substitute one or more projects of equal value, as determined by an independent appraiser satisfactory to the authority, for any project financed under the act on such terms and subject to such conditions as the authority may prescribe.

**Source:** Laws 1981, LB 321, § 34; Laws 1993, LB 465, § 17; R.S.1943, (1994), § 79-2934; Laws 1995, LB 5, § 34; R.S.1943, (2008), § 85-1734; Laws 2013, LB170, § 37; Laws 2019, LB224, § 20.

**58-838 Expenses; how paid; liability; limitation.**

All expenses incurred in carrying out the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act shall be payable solely from funds provided under the act, and no liability or obligation shall be incurred by the authority beyond the extent to which money has been provided under the act.

**Source:** Laws 1981, LB 321, § 35; Laws 1993, LB 465, § 18; R.S.1943, (1994), § 79-2935; Laws 1995, LB 5, § 35; R.S.1943, (2008), § 85-1735; Laws 2013, LB170, § 38; Laws 2019, LB224, § 21.

**58-839 Authority; acquisition of property.**

The authority is authorized and empowered, directly or by and through an eligible institution, as its agent, to acquire by purchase, gift, or devise, such lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and other interests in lands, and including existing facilities of an eligible institution, as it may deem necessary or convenient for the acquisition, construction, improvement, equipment, renovation, or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between the authority and the owner thereof, and to take title thereto in the name of the authority or in the name of an eligible institution as its agent.

**Source:** Laws 1981, LB 321, § 36; R.S.1943, (1994), § 79-2936; Laws 1995, LB 5, § 36; R.S.1943, (2008), § 85-1736; Laws 2013, LB170, § 39.

**58-840 Authority; financing obligations completed; convey title to eligible institution.**

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for an eligible institution, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution and any trust indenture authorizing the same have been satisfied and the lien created by such resolution or trust indenture has been released in accordance with the provisions thereof, the authority shall promptly do such things and execute such deeds, conveyances, and other instruments, if any, as are necessary and required to convey title to such project or projects to such eligible institution.

**Source:** Laws 1981, LB 321, § 37; R.S.1943, (1994), § 79-2937; Laws 1995, LB 5, § 37; R.S.1943, (2008), § 85-1737; Laws 2013, LB170, § 40.

**58-841 Authority; bonds; issuance; form; proceeds; how used; replacement; liability; liability insurance; indemnification.**

The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bonds for the purpose of (1) paying, refinancing, or reimbursing all or any part of the cost of a project, (2) administering and operating the Nebraska Health Education Assistance Loan Program and the Nebraska Student Loan Assistance Program, or (3) making loans to any eligible institution in anticipation of the receipt of tuition or other revenue by the eligible institution. Except to the extent payable from payments to be made on securities or federally guaranteed securities as provided in sections 58-844 and 58-845, the principal of and the interest on such bonds shall be payable solely out of the revenue of the authority derived from the project or program to which they relate and from any other facilities or assets pledged or made available therefor by the eligible institution for whose benefit such bonds were issued. The bonds of each issue shall be dated, shall bear interest at such rate or rates, including variations of such rates, without regard to any limit contained in any other statute or law of the State of Nebraska, shall mature at such time or times not exceeding forty years from the date thereof, all as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices, which may be at a premium or discount, and under such terms and conditions as may be fixed by the authority in the authorizing resolution and any trust indenture. Except to the extent required by the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act and for bonds issued to fund the Nebraska Student Loan Assistance Program, such bonds are to be paid out of the revenue of the project to which they relate and, in certain instances, the revenue of certain other facilities, and subject to the provisions of sections 58-844 and 58-845 with respect to a pledge of securities or government securities, the bonds may be unsecured or secured in the manner and to the extent determined by the authority in its discretion.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest which may be at any bank or trust company within or without the state. The

bonds shall be signed in the name of the authority, by its chairperson or vice-chairperson or by a facsimile signature of such person, the official seal of the authority or a facsimile thereof shall be affixed thereto or printed or impressed thereon and attested by the manual or facsimile signature of the executive director or assistant executive director of the authority, except that facsimile signatures of members of the authority shall be sufficient only if the resolution or trust indenture requires that the trustee for such bond issue manually authenticate each bond and the resolution or trust indenture permits the use of facsimile signatures, and any coupons attached to the bonds shall bear the facsimile signature of the executive director or assistant executive director of the authority. The resolution or trust indenture authorizing the bonds may provide that the bonds contain a recital that they are issued under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, and such recital shall be deemed conclusive evidence of the validity of the bonds and the regularity of the issuance. The provisions of section 10-126 shall not apply to bonds issued by the authority. The provisions of section 10-140 shall apply to bonds issued by the authority. In case any official of the authority whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such an official before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained an official of the authority until such delivery.

All bonds issued under the act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the law of the State of Nebraska. The bonds may be issued in coupon or in registered form, or both, and one form may be exchangeable for the other in such manner as the authority may determine. Provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The bonds may be sold in such manner, either at public or private sale, as the authority may determine.

The proceeds of the bonds of each issue shall be used solely for the payment of the costs of the project or program for which such bonds have been issued and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust indenture provided for in section 58-843 securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, are less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue exceed the cost of the project or program for which they were issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or shall be applied as may otherwise be permitted by applicable federal income tax laws relating to the tax exemption of interest.

Prior to the preparation of definitive bonds, the authority may under like restrictions issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

The authority may also provide for the replacement of any bonds which become mutilated or are destroyed or lost. Bonds may be issued under the act without obtaining the consent of any officer, department, division, commission, board, bureau, or agency of the state and without any other proceedings or conditions other than those proceedings and conditions which are specifically required by the act. The authority may out of any funds available therefor purchase its bonds. The authority may hold, pledge, cancel, or resell such bonds, subject to and in accordance with any agreement with the bondholders.

Members of the authority shall not be liable to the state, the authority, or any other person as a result of their activities, whether ministerial or discretionary, as authority members, except for willful dishonesty or intentional violations of law. Members of the authority and any person executing bonds or policies of insurance shall not be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof. The authority may purchase liability insurance for members, officers, and employees and may indemnify any authority member to the same extent that a school district may indemnify a school board member pursuant to section 79-516.

**Source:** Laws 1981, LB 321, § 38; Laws 1983, LB 159, § 4; Laws 1993, LB 465, § 19; R.S.1943, (1994), § 79-2938; Laws 1995, LB 5, § 38; Laws 2003, LB 107, § 2; Laws 2011, LB424, § 1; R.S.Supp.,2012, § 85-1738; Laws 2013, LB170, § 41; Laws 2019, LB224, § 22.

**58-842 Bond issuance; resolution; provisions enumerated.**

Any resolution or resolutions authorizing any bonds or any issue of bonds and any trust indenture securing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to (1) pledging or assigning the revenue of the project or loan with respect to which such bonds are to be issued or the revenue of any other property, facilities, or loans, (2) the rentals, fees, loan payments, and other amounts to be charged, the amounts to be raised in each year thereby, and the use and disposition of such amounts, (3) the setting aside of reserves or sinking funds, and the regulation, investment, and disposition thereof, (4) limitations on the use of the project, (5) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds, (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds, (7) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given, (8) limitations on the amount of money derived from the project or loan to be expended for operating, administrative, or other expenses of the authority, (9) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default, (10) the mortgaging of a project and the site thereof or any other property for the purpose of securing the bondholders, and (11) any other matters relating to the bonds which the authority deems desirable.

**Source:** Laws 1981, LB 321, § 39; Laws 1983, LB 159, § 5; R.S.1943, (1994), § 79-2939; Laws 1995, LB 5, § 39; R.S.1943, (2008), § 85-1739; Laws 2013, LB170, § 42.

**58-843 Bonds; secured by trust indenture; contents; expenses; how treated.**

In the discretion of the authority any bonds issued under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act may be secured by a trust indenture, which trust indenture may be in the form of a bond resolution or similar contract, by and between the authority and a corporate trustee or trustees which may be any financial institution having the power of a trust company or any trust company within or outside the state. Such trust indenture providing for the issuance of such bonds may pledge or assign the revenue to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. The trust indenture by which a pledge is created or an assignment made shall be filed in the records of the authority.

Any pledge or assignment made by the authority pursuant to this section shall be valid and binding from the time that the pledge or assignment is made, and the revenue so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge or assignment without physical delivery thereof or any further act. The lien of such pledge or assignment shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether such parties have notice thereof.

Such trust indenture may set forth the rights and remedies of the bondholders and of the trustee or trustees, may restrict the individual right of action by bondholders, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee or trustees as may be reasonable and proper, not in violation of law, or provided for in the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act. Any such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

Any bank or trust company which acts as depository of the proceeds of the bonds, any revenue, or other money shall furnish such indemnifying bonds or pledge such securities as may be required by the authority.

All expenses incurred in carrying out the provisions of such trust indenture may be treated as a part of the cost of the operation of a project.

**Source:** Laws 1981, LB 321, § 40; Laws 1993, LB 465, § 20; R.S.1943, (1994), § 79-2940; Laws 1995, LB 5, § 40; R.S.1943, (2008), § 85-1740; Laws 2013, LB170, § 43; Laws 2019, LB224, § 23.

**58-844 Bonds issued to purchase securities of eligible institution; provisions applicable.**

In addition to any other methods of financing authorized in the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, the authority may finance the cost of a project or program, refund outstanding indebtedness, or reimburse advances from an endowment or any similar fund of an eligible institution as authorized by section 58-834 by issuing its bonds for the purpose of purchasing the securities of the eligible institution. Any such securities shall have the same principal amounts, maturities, and interest rates as the bonds being issued, may be secured by a first mortgage lien on or security interest in any real or personal property, subject to such exceptions as the authority may approve and created by a mortgage or security instrument satisfactory to the authority, and may be insured or guaranteed by others. Any

such bonds shall be secured by a pledge of such securities under the trust indenture securing such bonds, shall be payable solely out of the payments to be made on such securities, and shall not exceed in principal amount the cost of such project or program, the refunding of such indebtedness, or reimbursement of such advances as determined by the eligible institution and approved by the authority. In other respects any such bonds shall be subject to the act, including sections 58-841 and 58-842, and the trust indenture securing such bonds may contain any of the provisions set forth in section 58-843 as the authority may consider appropriate.

If a project is financed pursuant to this section, the title to such project shall remain in the eligible institution owning such project, subject to the lien of the mortgage or security interest, if any, securing the securities then being purchased, and there shall be no lease of such facility between the authority and such eligible institution.

Section 58-840 shall not apply to any project financed pursuant to this section, but the authority shall return the securities purchased through the issuance of bonds pursuant to this section to the eligible institution issuing such securities when such bonds have been fully paid and retired or when adequate provision has been made to pay and retire such bonds fully and all other conditions of the trust indenture securing such bonds have been satisfied and any lien established pursuant to this section has been released in accordance with the provisions of the trust indenture.

**Source:** Laws 1981, LB 321, § 41; Laws 1993, LB 465, § 21; R.S.1943, (1994), § 79-2941; Laws 1995, LB 5, § 41; R.S.1943, (2008), § 85-1741; Laws 2013, LB170, § 44; Laws 2019, LB224, § 24.

**58-845 Bonds issued to acquire federally guaranteed securities; provisions applicable.**

Notwithstanding any other provision of the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act to the contrary, the authority may finance the cost of a project or program, refund outstanding indebtedness, or reimburse advances from any endowment or any similar fund of an eligible institution as authorized by the act, by issuing its bonds pursuant to a plan of financing involving the acquisition of any federally guaranteed security or securities or the acquisition or entering into of commitments to acquire any federally guaranteed security or securities. For purposes of this section, federally guaranteed security means any direct obligation of or obligation the principal of and interest on which are fully guaranteed or insured by the United States of America or any obligation issued by or the principal of and interest on which are fully guaranteed or insured by any agency or instrumentality of the United States of America, including without limitation any such obligation that is issued pursuant to the National Housing Act, or any successor provision of law, each as amended from time to time.

In furtherance of the powers granted in this section, the authority may acquire or enter into commitments to acquire any federally guaranteed security and pledge or otherwise use any such federally guaranteed security in such manner as the authority deems in its best interest to secure or otherwise provide a source of repayment of any of its bonds issued to finance or refinance a project or program or may enter into any appropriate agreement with any eligible institution whereby the authority may make a loan to any such eligible

institution for the purpose of acquiring or entering into commitments to acquire any federally guaranteed security.

Any agreement entered into pursuant to this section may contain such provisions as are deemed necessary or desirable by the authority for the security or protection of the authority or the holders of such bonds, except that the authority, prior to making any such acquisition, commitment, or loan, shall first determine and enter into an agreement with any such eligible institution or any other appropriate institution or corporation to require that the proceeds derived from the acquisition of any such federally guaranteed security will be used, directly or indirectly, for the purpose of financing or refinancing a project or program.

Any bonds issued pursuant to this section shall not exceed in principal amount the cost of financing or refinancing such project or program as determined by the participating eligible institution and approved by the authority, except that such costs may include, without limitation, all costs and expenses necessary or incidental to the acquisition of or commitment to acquire any federally guaranteed security and to the issuance and obtaining of any insurance or guarantee of any obligation issued or incurred in connection with any federally guaranteed security. In other respects any such bonds shall be subject to the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, including sections 58-841 and 58-842, and the trust indenture securing such bonds may contain such of the provisions set forth in section 58-843 as the authority may deem appropriate.

If a project is financed or refinanced pursuant to this section, the title to such project shall remain in the participating eligible institution owning the project, subject to the lien of any mortgage or security interest securing, directly or indirectly, the federally guaranteed securities then being purchased or to be purchased, and there shall be no lease of such facility between the authority and such eligible institution.

Section 58-840 shall not apply to any project financed pursuant to this section, but the authority shall return the securities purchased through the issuance of bonds pursuant to this section to the issuer of such securities when such securities have been fully paid, when such bonds have been fully paid and retired, or when adequate provision, not involving the application of such securities, has been made to pay and retire such bonds fully, all other conditions of the trust indenture securing such bonds have been satisfied, and the lien on such bonds has been released in accordance with the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 42; Laws 1993, LB 465, § 22; R.S.1943, (1994), § 79-2942; Laws 1995, LB 5, § 42; R.S.1943, (2008), § 85-1742; Laws 2013, LB170, § 45; Laws 2019, LB224, § 25.

**58-846 Refunding bonds; issuance authorized; provisions applicable.**

The authority is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued by it under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of maturity or earlier redemption of such bonds, and, in the case of a project and if deemed advisable by the authority, for the additional purposes of



acquiring, constructing, improving, equipping, and renovating improvements, extensions, or enlargements of the project in connection with which the bonds to be refunded were issued and of paying any expenses which the authority determines may be necessary or incidental to the issuance of such refunding bonds and the acquiring, constructing, improving, equipping, and renovating of such improvements, extensions, or enlargements. Such refunding bonds shall be payable solely out of the revenue of the project, including any such improvements, extensions, or enlargements thereto, or program to which the bonds being refunded relate or as otherwise described in sections 58-841, 58-844, 58-845, 58-860, and 58-861. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, the rights, duties, and obligations of the authority with respect to such bonds, and the manner of sale thereof shall be governed by the act insofar as applicable.

The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or earlier redemption of such outstanding bonds either on their earliest or any subsequent redemption date, upon the purchase of such bonds, or at the maturity of such bonds and may, pending such application, be placed in escrow to be applied to such purchase, retirement at maturity, or earlier redemption.

Any such escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States of America or obligations the timely payment of principal and interest on which is fully guaranteed by the United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment of the principal of and interest and redemption premium, if any, on the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. Only after the terms of the escrow have been fully satisfied and carried out may any balance of such proceeds, interest, income, or profits earned or realized on the investments thereof be returned to the eligible institution for whose benefit the refunded bonds were issued for use by it in any lawful manner.

All such bonds shall be subject to the act in the same manner and to the same extent as other revenue bonds issued pursuant to the act.

**Source:** Laws 1981, LB 321, § 43; Laws 1983, LB 159, § 6; Laws 1993, LB 465, § 23; R.S.1943, (1994), § 79-2943; Laws 1995, LB 5, § 43; R.S.1943, (2008), § 85-1743; Laws 2013, LB170, § 46; Laws 2019, LB224, § 26.

**58-847 Bond issuance; state or political subdivision; no obligation; statement; expenses.**

Bonds issued pursuant to the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act shall not be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but such bonds shall be a limited obligation of the authority payable solely from the funds, securities, or government securities pledged for their payment as authorized in the act unless such bonds are refunded by refunding bonds issued under the act, which refunding bonds shall be payable solely from funds, securities, or government securities pledged for their payment as authorized in the act. All such revenue

bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not an obligation of the State of Nebraska or of any political subdivision thereof but are limited obligations of the authority payable solely from revenue, securities, or government securities, as the case may be, pledged for their payment. All expenses incurred in carrying out the act shall be payable solely from funds provided under the authority of the act, and nothing contained in the act shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision thereof.

**Source:** Laws 1981, LB 321, § 44; Laws 1993, LB 465, § 24; R.S.1943, (1994), § 79-2944; Laws 1995, LB 5, § 44; R.S.1943, (2008), § 85-1744; Laws 2013, LB170, § 47; Laws 2019, LB224, § 27.

**58-848 Authority; rents or loan payments; use.**

Except for projects financed or refinanced pursuant to sections 58-844 and 58-845, the authority shall fix, revise, charge, and collect rents or loan payments for the use of or payment for each project and contract with any eligible institution in respect thereof. Each lease or loan agreement entered into by the authority with an eligible institution shall provide that the rents or loan payments payable by the eligible institution shall be sufficient at all times (1) to pay the eligible institution's share of the administrative costs and expenses of the authority, (2) to pay the authority's cost, if any, of maintaining, repairing, and operating the project and each and every portion thereof, (3) to pay the principal of, the premium, if any, and the interest on outstanding bonds of the authority issued with respect to such project as the same shall become due and payable, and (4) to create and maintain reserves which may be provided for in the resolution or trust indenture relating to such bonds of the authority.

With respect to projects financed pursuant to sections 58-844 and 58-845, the authority shall require the eligible institution involved to enter into loan or other financing agreements obligating such eligible institution to make payments sufficient to accomplish the purposes described in this section.

**Source:** Laws 1981, LB 321, § 45; R.S.1943, (1994), § 79-2945; Laws 1995, LB 5, § 45; R.S.1943, (2008), § 85-1745; Laws 2013, LB170, § 48.

**58-849 Money received by authority; deemed trust funds; investment.**

All money received by the authority, whether as proceeds from the sale of bonds, from revenue, or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act but, prior to the time when needed for use, may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States of America, obligations issued by agencies of the United States of America, any obligations of the United States of America or agencies thereof, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to subsection (1) of section 77-2341, except that any funds pledged to secure a bond issue shall be invested in the manner permitted by the resolution or trust indenture securing such bonds. Such funds shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state

or in national banking associations. The money in such accounts shall be paid out on checks signed by the executive director or other officers or employees of the authority as the authority authorizes. All deposits of money shall, if required by the authority, be secured in such a manner as the authority determines to be prudent, and all banks or trust companies may give security for the deposits, except to the extent provided otherwise in the resolution authorizing the issuance of the related bonds or in the trust indenture securing such bonds. The resolution authorizing the issuance of such bonds or the trust indenture securing such bonds shall provide that any officer to whom or any bank or trust company to which such money is entrusted shall act as trustee of such money and shall hold and apply the same for the purposes of the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, subject to the act, and of the authorizing resolution or trust indenture.

**Source:** Laws 1981, LB 321, § 46; Laws 1993, LB 465, § 25; R.S.1943, (1994), § 79-2946; Laws 1995, LB 5, § 46; R.S.1943, (2008), § 85-1746; Laws 2013, LB170, § 49; Laws 2019, LB224, § 28.

#### **58-850 Bondholders and trustee; enforcement of rights.**

Any holder of bonds or of any of the coupons appertaining thereto issued under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act and the trustee under any trust indenture, except to the extent the rights given in the act may be restricted by the resolution or trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state, the act, or such trust indenture or resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by the act or by such trust indenture or resolution to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, rents, loan payments, fees, and charges authorized in the act and required by the provisions of such resolution or trust indenture to be fixed, established, and collected.

Such rights shall include the right to compel the performance of all duties of the authority required by the act or the resolution or trust indenture to enjoin unlawful activities and, in the event of default with respect to the payment of any principal of and premium, if any, and interest on any bond or in the performance of any covenant or agreement on the part of the authority in the resolution or trust indenture, to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate a project, the revenue of which is pledged to the payment of the principal of and premium, if any, and interest on such bonds, with full power to pay and to provide for payment of the principal of and premium, if any, and interest on such bonds, and with such powers, subject to the direction of the court, as are permitted by law and are accorded receivers in general equity cases, excluding any power to pledge additional revenue of the authority to the payment of such principal, premium, and interest, and to foreclose the mortgage on the project in the same manner as the foreclosure of a mortgage on real estate of private corporations.

**Source:** Laws 1981, LB 321, § 47; Laws 1993, LB 465, § 26; R.S.1943, (1994), § 79-2947; Laws 1995, LB 5, § 47; R.S.1943, (2008), § 85-1747; Laws 2013, LB170, § 50; Laws 2019, LB224, § 29.

**58-851 Act, how construed.**

The Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

**Source:** Laws 1981, LB 321, § 48; Laws 1993, LB 465, § 27; R.S.1943, (1994), § 79-2948; Laws 1995, LB 5, § 48; R.S.1943, (2008), § 85-1748; Laws 2013, LB170, § 51; Laws 2019, LB224, § 30.

**58-852 Authority; journal; public records.**

All final actions of the authority shall be recorded in a journal, and the journal and all instruments and documents relating thereto shall be kept on file at the office of the authority and shall be open to the inspection of the public at all reasonable times.

**Source:** Laws 1981, LB 321, § 49; R.S.1943, (1994), § 79-2949; Laws 1995, LB 5, § 49; R.S.1943, (2008), § 85-1749; Laws 2013, LB170, § 52.

**58-853 Authority; public purpose; exemptions from taxation.**

The exercise of the powers granted by the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act shall be in all respects for the benefit of the people of the state, for the increase of their commerce, welfare, and prosperity, for the fostering, encouragement, protection, and improvement of their health and living conditions, and for the development of their intellectual and mental capacities and skills, and as the operation, maintenance, financing, or refinancing of a project or program by the authority or its agent will constitute the performance of essential governmental functions and serve a public purpose, neither the authority nor its agent shall be required to pay any taxes or assessments, upon or with respect to a project or any property acquired or used by the authority or its agent under the act, upon the income therefrom, or upon any other amounts received by the authority in respect thereof, including payments of principal of or premium or interest on or in respect of any securities purchased pursuant to section 58-844 or any government securities involved in a plan of financing pursuant to section 58-845. The bonds issued under the act, the interest thereon, the proceeds received by a holder from the sale of such bonds to the extent of the holder's cost of acquisition, or proceeds received upon redemption prior to maturity, proceeds received at maturity, and the receipt of such interest and proceeds shall be exempt from taxation in the State of Nebraska for all purposes except the state inheritance tax.

**Source:** Laws 1981, LB 321, § 50; Laws 1993, LB 465, § 28; R.S.1943, (1994), § 79-2950; Laws 1995, LB 5, § 50; R.S.1943, (2008), § 85-1750; Laws 2013, LB170, § 53; Laws 2019, LB224, § 31.

**58-854 Bondholders; pledge; agreement of the state.**

The State of Nebraska does hereby pledge to and agree with the holders of any obligations issued under the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act and with those parties who may enter into contracts with the authority pursuant to the act that the state will not limit or alter the rights vested in the authority until such obligations, together with

the interest thereon, are fully met and discharged and such contracts are fully performed on the part of the authority, except that nothing contained in this section shall preclude such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority.

**Source:** Laws 1981, LB 321, § 51; Laws 1993, LB 465, § 29; R.S.1943, (1994), § 79-2951; Laws 1995, LB 5, § 51; R.S.1943, (2008), § 85-1751; Laws 2013, LB170, § 54; Laws 2019, LB224, § 32.

**58-855 Act; supplemental to other laws.**

The Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act shall be deemed to provide a complete, additional, and alternative method for doing the things authorized in the act and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under the act need not comply with the requirements of any other law applicable to the issuance of bonds, and the acquisition, construction, improvement, equipment, and renovation of a project pursuant to the act by the authority need not comply with the requirements of any competitive bidding law or other restriction imposed on the procedure for award of contracts for the acquisition, construction, improvement, equipment, and renovation of a project or the lease, sale, or disposition of property of the authority, except that if the prospective lessee so requests in writing, the authority shall call for construction bids in such manner as shall be determined by the authority with the approval of such lessee. Except as otherwise expressly provided in the act, none of the powers granted to the authority under the act shall be subject to the supervision of or regulation by or require the approval or consent of any municipality, commission, board, body, bureau, official, or other political subdivision or agency of the state.

**Source:** Laws 1981, LB 321, § 52; Laws 1993, LB 465, § 30; R.S.1943, (1994), § 79-2952; Laws 1995, LB 5, § 52; R.S.1943, (2008), § 85-1752; Laws 2013, LB170, § 55; Laws 2019, LB224, § 33.

**58-856 Act; provisions controlling.**

To the extent that the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act is inconsistent with the provisions of any general statute or special act or parts thereof, the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act shall be deemed controlling.

**Source:** Laws 1981, LB 321, § 53; Laws 1993, LB 465, § 31; R.S.1943, (1994), § 79-2953; Laws 1995, LB 5, § 53; R.S.1943, (2008), § 85-1753; Laws 2013, LB170, § 56; Laws 2019, LB224, § 34.

**58-857 Nebraska Health Education Assistance Loan Program; established.**

There is hereby established, in accordance with Public Law 94-484, the Nebraska Health Education Assistance Loan Program, to be financed by the authority in the manner provided in the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act.

**Source:** Laws 1983, LB 159, § 7; Laws 1993, LB 465, § 32; R.S.1943, (1994), § 79-2954; Laws 1995, LB 5, § 54; R.S.1943, (2008), § 85-1754; Laws 2013, LB170, § 57; Laws 2019, LB224, § 35.

**58-858 Nebraska Health Education Assistance Loan Program; authority; powers.**

The authority may:

- (1) Make loans;
- (2) Participate in the financing of loans;
- (3) Purchase or participate in the purchase of loans;
- (4) Sell or participate in the sale of loans;
- (5) Collect and pay reasonable fees and charges in connection with the exercise of the powers provided in subdivisions (1) through (4) of this section;
- (6) Do all things necessary and convenient to carry out the purposes of sections 58-857 to 58-862 in connection with the administering and servicing of loans, including contracting with any person, firm, or other body, public or private;
- (7) Enter into any agreements necessary to effect the guarantee, insuring, administering, or servicing of loans;
- (8) Adopt and promulgate rules and regulations governing and establish standards for participation in the program created by section 58-857, and establish other administrative procedures consistent with Public Law 94-484; and
- (9) Exercise all powers incidental to or necessary for the performance of the powers authorized by this section.

**Source:** Laws 1983, LB 159, § 8; R.S.1943, (1994), § 79-2955; Laws 1995, LB 5, § 55; R.S.1943, (2008), § 85-1755; Laws 2013, LB170, § 58.

**58-859 Nebraska Health Education Assistance Loan Program; loans; how funded.**

Any loan made, purchased, or caused to be made or purchased pursuant to section 58-858 may be funded with the proceeds of bonds, notes, or other obligations of the authority issued pursuant to sections 58-857 to 58-862. The resolution or trust indenture creating such bonds, notes, or other obligations may contain any of the provisions specified in section 58-843 as the authority shall deem appropriate and any other provisions, not in violation of law, as the authority shall deem reasonable and proper for the security of the holders of such bonds, notes, or other obligations.

The proceeds of any such bonds, notes, or other obligations may be used and applied by the authority to make loans, to purchase loans, to cause loans to be made or purchased, to pay financing costs, including, but not limited to, legal, underwriting, investment banking, accounting, rating agency, printing, and other similar costs, to fund any reserve funds deemed necessary or advisable by the authority, to pay interest on such bonds, notes, or other obligations for any period deemed necessary or advisable by the authority, and to pay all other necessary and incidental costs and expenses.

**Source:** Laws 1983, LB 159, § 9; R.S.1943, (1994), § 79-2956; Laws 1995, LB 5, § 56; R.S.1943, (2008), § 85-1756; Laws 2013, LB170, § 59.

**58-860 Nebraska Health Education Assistance Loan Program; bonds or other obligations; how paid.**

Notwithstanding section 58-841, all bonds, notes, or other obligations issued by the authority for the Nebraska Health Education Assistance Loan Program shall be payable out of the revenue generated in connection with loans funded under sections 58-857 to 58-862, or from reserves or other money available for such purpose as may be designated in the resolution of the authority under which the bonds, notes, or other obligations are issued or as may be designated in a trust indenture authorized by the authority.

**Source:** Laws 1983, LB 159, § 10; R.S.1943, (1994), § 79-2957; Laws 1995, LB 5, § 57; R.S.1943, (2008), § 85-1757; Laws 2013, LB170, § 60.

**58-861 Nebraska Health Education Assistance Loan Program; bonds; security.**

Notwithstanding section 58-843, the principal of and interest on any bonds issued by the authority for the Nebraska Health Education Assistance Loan Program shall be secured by a pledge of the revenue and other money out of which such principal and interest shall be made payable and may be secured by a trust indenture, mortgage, or deed of trust, including an assignment of a loan or contract right of the authority pursuant to a loan, covering all or any part of a loan from which the revenue or receipts so pledged may be derived.

**Source:** Laws 1983, LB 159, § 11; R.S.1943, (1994), § 79-2958; Laws 1995, LB 5, § 58; R.S.1943, (2008), § 85-1758; Laws 2013, LB170, § 61.

**58-862 Nebraska Health Education Loan Repayment Fund; created; use.**

There is hereby created a separate fund, to be known as the Nebraska Health Education Loan Repayment Fund, which shall consist of all revenue generated in connection with loans funded pursuant to the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act. The authority may pledge revenue received or to be received by the fund to secure bonds, notes, or other obligations issued pursuant to the act. The authority may create such subfunds or accounts within the fund as it deems necessary or advisable.

**Source:** Laws 1983, LB 159, § 12; Laws 1993, LB 465, § 33; R.S.1943, (1994), § 79-2959; Laws 1995, LB 5, § 59; R.S.1943, (2008), § 85-1759; Laws 2013, LB170, § 62; Laws 2019, LB224, § 36.

**58-863 Nebraska Student Loan Assistance Program; established.**

There is hereby established the Nebraska Student Loan Assistance Program to be financed by the authority in the manner provided in the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act.

**Source:** Laws 1993, LB 465, § 34; R.S.1943, (1994), § 79-2961; Laws 1995, LB 5, § 60; R.S.1943, (2008), § 85-1760; Laws 2013, LB170, § 63; Laws 2019, LB224, § 37.

**58-864 Nebraska Student Loan Assistance Program; authority; powers.**

The authority may:

- (1) Make loans to private institutions of higher education to assist such institutions in providing loans to their full-time students to assist them in financing the cost of their education while taking courses leading to an academic degree;
- (2) Participate in the financing of such loans;
- (3) Sell or participate in the sale of such loans;
- (4) Collect and pay reasonable fees and charges in connection with the exercise of the powers provided in subdivisions (1) through (3) of this section;
- (5) Do all things necessary and convenient to carry out the purposes of this section and section 58-865 in connection with the administering of such loans, including contracting with any person, firm, or other body, public or private;
- (6) Enter into any agreements necessary to effect the guarantee, insuring, or administering of such loans;
- (7) Adopt and promulgate rules and regulations governing and establish standards for participation in the Nebraska Student Loan Assistance Program; and
- (8) Exercise all powers incidental to or necessary for the performance of the powers authorized by this section.

**Source:** Laws 1993, LB 465, § 35; R.S.1943, (1994), § 79-2962; Laws 1995, LB 5, § 61; R.S.1943, (2008), § 85-1761; Laws 2013, LB170, § 64.

#### **58-865 Nebraska Student Loan Assistance Program; loans; how funded.**

Any loan made or caused to be made or purchased pursuant to section 58-864 may be funded with the proceeds of bonds, notes, or other obligations of the authority issued pursuant to this section and sections 58-841, 58-846, 58-863, and 58-864. The resolution or trust indenture creating such bonds, notes, or other obligations may contain any of the provisions specified in section 58-843 as the authority deems appropriate and any other provisions, not in violation of law, as the authority deems reasonable and proper for the security of the holders of such bonds, notes, or other obligations.

The proceeds of any such bonds, notes, or other obligations may be used and applied by the authority to make loans to such institutions and cause loans to be made by the institutions to their qualified students, to pay financing costs, including legal, underwriting, investment banking, accounting, rating agency, printing, and other similar costs, to fund any reserve funds deemed necessary or advisable by the authority, to pay interest on such bonds, notes, or other obligations for any period deemed necessary or advisable by the authority, and to pay all other necessary and incidental costs and expenses.

**Source:** Laws 1993, LB 465, § 36; R.S.1943, (1994), § 79-2963; Laws 1995, LB 5, § 62; R.S.1943, (2008), § 85-1762; Laws 2013, LB170, § 65.

#### **58-866 Change in name; effect.**

- (1) It is the intent of the Legislature that the changes made by Laws 1993, LB 465, in the name of the Nebraska Educational Facilities Authority Act to the Nebraska Educational Finance Authority Act and in the name of the Nebraska Educational Facilities Authority to the Nebraska Educational Finance Authority



shall not affect or alter any rights, privileges, or obligations existing immediately prior to September 9, 1993.

(2) It is the intent of the Legislature that the changes made by Laws 2013, LB170, in the name of the Nebraska Educational Finance Authority Act to the Nebraska Educational, Health, and Social Services Finance Authority Act and in the name of the Nebraska Educational Finance Authority to the Nebraska Educational, Health, and Social Services Finance Authority shall not affect or alter any rights, privileges, or obligations existing immediately prior to September 6, 2013.

(3) It is the intent of the Legislature that the changes made by Laws 2019, LB224, in the name of the Nebraska Educational, Health, and Social Services Finance Authority Act to the Nebraska Educational, Health, Cultural, and Social Services Finance Authority Act and in the name of the Nebraska Educational, Health, and Social Services Finance Authority to the Nebraska Educational, Health, Cultural, and Social Services Finance Authority shall not affect or alter any rights, privileges, or obligations existing immediately prior to September 1, 2019.

**Source:** Laws 1993, LB 465, § 37; R.S.1943, (1994), § 79-2964; Laws 1995, LB 5, § 63; R.S.1943, (2008), § 85-1763; Laws 2013, LB170, § 66; Laws 2019, LB224, § 38.



## CHAPTER 59

### MONOPOLIES AND UNLAWFUL RESTRAINT OF TRADE

Article.

1. Trusts. Repealed.
2. Grain Dealers. Repealed.
3. Fire Insurance Companies. Repealed.
4. Lumber and Coal Dealers. Repealed.
5. Local Discrimination. 59-501 to 59-509.
6. Pooling by Bridge Contractors. Repealed.
7. Rebate Vouchers. Repealed.
8. Unlawful Restraint of Trade. 59-801 to 59-831.
9. Regulation of Public Markets. Repealed.
10. Dairy Industry. Repealed.
11. Fair Trade Act. Repealed.
12. Unfair Sales Act. Repealed.
13. Monopoly Relating to Musical Compositions. Repealed.
14. Musical Compositions. 59-1401 to 59-1406.
15. Cigarette Sales.
  - (a) Unfair Cigarette Sales Act. 59-1501 to 59-1518.
  - (b) Grey Market Sales. 59-1519 to 59-1525.
16. Consumer Protection Act. 59-1601 to 59-1623.
17. Seller-Assisted Marketing Plan. 59-1701 to 59-1762.
18. Charitable Gift Annuity Act. 59-1801 to 59-1803.

#### ARTICLE 1

##### TRUSTS

Section

- 59-101. Repealed. Laws 1980, LB 741, § 1.

**59-101 Repealed. Laws 1980, LB 741, § 1.**

#### ARTICLE 2

##### GRAIN DEALERS

Section

- 59-201. Repealed. Laws 1974, LB 1028, § 32.  
 59-202. Repealed. Laws 1974, LB 1028, § 32.  
 59-203. Repealed. Laws 1974, LB 1028, § 32.  
 59-204. Repealed. Laws 1974, LB 1028, § 32.

**59-201 Repealed. Laws 1974, LB 1028, § 32.**

**59-202 Repealed. Laws 1974, LB 1028, § 32.**

**59-203 Repealed. Laws 1974, LB 1028, § 32.**

**59-204 Repealed. Laws 1974, LB 1028, § 32.**

**ARTICLE 3  
FIRE INSURANCE COMPANIES**

Section

- 59-301. Repealed. Laws 1969, c. 485, § 5.
- 59-302. Repealed. Laws 1969, c. 485, § 5.
- 59-303. Repealed. Laws 1969, c. 485, § 5.
- 59-304. Repealed. Laws 1969, c. 485, § 5.

**59-301 Repealed. Laws 1969, c. 485, § 5.**

**59-302 Repealed. Laws 1969, c. 485, § 5.**

**59-303 Repealed. Laws 1969, c. 485, § 5.**

**59-304 Repealed. Laws 1969, c. 485, § 5.**

**ARTICLE 4  
LUMBER AND COAL DEALERS**

Section

- 59-401. Repealed. Laws 1974, LB 1028, § 32.
- 59-402. Repealed. Laws 1974, LB 1028, § 32.
- 59-403. Repealed. Laws 1974, LB 1028, § 32.

**59-401 Repealed. Laws 1974, LB 1028, § 32.**

**59-402 Repealed. Laws 1974, LB 1028, § 32.**

**59-403 Repealed. Laws 1974, LB 1028, § 32.**

**ARTICLE 5  
LOCAL DISCRIMINATION**

Section

- 59-501. Sales; discrimination; when unlawful.
- 59-502. Sales; unlawful discrimination; prima facie evidence.
- 59-503. Purchases; discrimination; when unlawful.
- 59-504. Purchases; unlawful discrimination; prima facie evidence.
- 59-505. Unlawful discrimination; penalty.
- 59-506. Unlawful discrimination; contracts void.
- 59-507. Attorney General, county attorneys; duty to enforce sections.
- 59-508. Unlawful discrimination by corporations; penalty; prosecution by Attorney General; injunction; corporations in which the public has an interest.
- 59-509. Repealed. Laws 1974, LB 1028, § 32.

**59-501 Sales; discrimination; when unlawful.**

Any person, firm, or company, association or corporation, foreign or domestic, doing business in the State of Nebraska and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities, or cities of this state by selling such commodity at a lower rate in one section, community or city than is charged for said commodity by said party in another section,

community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

**Source:** Laws 1939, c. 77, § 1, p. 313; C.S.Supp.,1941, § 59-523; R.S. 1943, § 59-501.

Electricity is a commodity within the meaning of this section. State ex rel. Spillman v. Interstate Power Co., 118 Neb. 756, 226 N.W. 427 (1929). as they may demand. State v. Drayton, 82 Neb. 254, 117 N.W. 768 (1908).

Former act sustained as constitutional, but did not prevent persons dealing in commodities from selling them at such price

#### **59-502 Sales; unlawful discrimination; prima facie evidence.**

Proof that any person, firm, company, association or corporation has been discriminating between different sections, communities and cities of this state by selling a commodity at a lower rate in one section, community or city than is charged for said commodity by said party in another section, community or city, after making an allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw material, and from the point of manufacture, if a manufactured product, shall be prima facie evidence that the party so discriminating is guilty of unfair discrimination.

**Source:** Laws 1939, c. 77, § 1, p. 314; C.S.Supp.,1941, § 59-523; R.S. 1943, § 59-502.

#### **59-503 Purchases; discrimination; when unlawful.**

Any person, firm, company, association or corporation, foreign or domestic, doing business in the State of Nebraska, engaged in the business of collecting or buying any product, commodity or property of any kind, that shall intentionally, for the purpose of injuring or destroying the business of a competitor in any locality, discriminate between the different sections, communities or cities of this state by buying any product, commodity or property of any kind, and paying therefor a higher rate or price in one section, community or city than is paid for the same kind of product, commodity or property by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of the transportation from the point where the same is purchased to the market where it is sold, or intended to be sold, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

**Source:** Laws 1939, c. 77, § 1, p. 314; C.S.Supp.,1941, § 59-523; R.S. 1943, § 59-503.

#### **59-504 Purchases; unlawful discrimination; prima facie evidence.**

Proof that any person, firm, company, association or corporation has been discriminating between different sections, communities and cities by buying any product, commodity or property of any kind, and paying therefor a higher rate or price in one section, community or city than is paid for the same kind of product, commodity or property by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point where the same

is purchased to the market where same is sold or intended to be sold, shall be prima facie evidence that the party so discriminating is guilty of unfair discrimination.

**Source:** Laws 1939, c. 77, § 1, p. 314; C.S.Supp.,1941, § 59-523; R.S. 1943, § 59-504.

**59-505 Unlawful discrimination; penalty.**

Any person, firm, company, association or corporation violating any of the provisions of sections 59-501 and 59-503, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual, violating any of the provisions of said sections, shall be deemed guilty of a Class I misdemeanor.

**Source:** Laws 1939, c. 77, § 2, p. 315; C.S.Supp.,1941, § 59-524; R.S. 1943, § 59-505; Laws 1977, LB 39, § 61.

**59-506 Unlawful discrimination; contracts void.**

All contracts or agreements made in violation of any of the provisions of sections 59-501 to 59-503 shall be void.

**Source:** Laws 1939, c. 77, § 3, p. 315; C.S.Supp.,1941, § 59-525; R.S. 1943, § 59-506.

**59-507 Attorney General, county attorneys; duty to enforce sections.**

It shall be the duty of the county attorneys, in their counties, and the Attorney General to enforce the provisions of sections 59-501 to 59-508.

**Source:** Laws 1939, c. 77, § 4, p. 315; C.S.Supp.,1941, § 59-526; R.S. 1943, § 59-507.

**59-508 Unlawful discrimination by corporations; penalty; prosecution by Attorney General; injunction; corporations in which the public has an interest.**

Any corporation, joint-stock company or other association that shall have been once adjudged to have violated the provisions of sections 59-501 to 59-507, by a final judgment of any court having jurisdiction of the question and who shall thereafter violate the provisions of said sections shall no longer be allowed to engage in business in this state; *Provided*, such prohibition shall be enforced only after such corporation, joint-stock company or other association shall have been enjoined against further engaging in such business on an information or suit brought in a court of competent jurisdiction by the Attorney General on behalf of this state. The Attorney General may, unless he shall be satisfied that such corporation, joint-stock company or other association has desisted and abstained and will in the future desist and abstain from such violation, enforce the provision by proceeding, either by information or by indictment, as he may in his discretion think best. Any corporation, joint-stock company or other association which shall be charged with violating said sections, and any president, director, treasurer, officer or agent thereof, may be enjoined as a party in any proceeding, civil or criminal, to enforce said sections. If, in the judgment of the Attorney General, such corporation, joint-stock company or other association, against which proceedings may be instituted, be one on which the public is so depending that the interruption of its business will cause serious public loss or inconvenience, he may, in his

discretion, refrain from proceeding to obtain a decree, which will absolutely prevent the continuance of such business, and may apply for a limited or conditional decree or one to take effect at a future day, as the public interests shall seem to require. If, in the judgment of the court before whom such proceedings may be pending, the interruption of the business of the defendant corporation, joint-stock company, or other association will cause such serious public loss or inconvenience, the court may decline to enter an absolute decree enjoining it against proceeding with its business and may enter a conditional decree or such a decree to take effect at a future time, as justice shall require. The court may also, in its discretion, enjoin such officers, agents or servants of such corporation, joint-stock company or other association from continuing in its service and enjoin any such corporation, joint-stock company or other association from continuing their employment therein, as the case shall seem to require.

**Source:** Laws 1939, c. 77, § 5, p. 315; C.S.Supp.,1941, § 59-527; Laws 1943, c. 132, § 1, p. 444; R.S.1943, § 59-508.

**59-509 Repealed. Laws 1974, LB 1028, § 32.**

#### ARTICLE 6

#### POOLING BY BRIDGE CONTRACTORS

##### Section

- 59-601. Repealed. Laws 1974, LB 1028, § 32.
- 59-602. Repealed. Laws 1974, LB 1028, § 32.
- 59-603. Repealed. Laws 1974, LB 1028, § 32.
- 59-604. Repealed. Laws 1974, LB 1028, § 32.
- 59-605. Repealed. Laws 1974, LB 1028, § 32.
- 59-606. Repealed. Laws 1974, LB 1028, § 32.

**59-601 Repealed. Laws 1974, LB 1028, § 32.**

**59-602 Repealed. Laws 1974, LB 1028, § 32.**

**59-603 Repealed. Laws 1974, LB 1028, § 32.**

**59-604 Repealed. Laws 1974, LB 1028, § 32.**

**59-605 Repealed. Laws 1974, LB 1028, § 32.**

**59-606 Repealed. Laws 1974, LB 1028, § 32.**

#### ARTICLE 7

#### REBATE VOUCHERS

##### Section

- 59-701. Repealed. Laws 1981, LB 381, § 41.
- 59-702. Repealed. Laws 1981, LB 381, § 41.
- 59-703. Repealed. Laws 1981, LB 381, § 41.
- 59-704. Repealed. Laws 1981, LB 381, § 41.
- 59-705. Repealed. Laws 1981, LB 381, § 41.

**59-701 Repealed. Laws 1981, LB 381, § 41.**

**59-702 Repealed. Laws 1981, LB 381, § 41.**

**59-703 Repealed. Laws 1981, LB 381, § 41.**

**59-704 Repealed. Laws 1981, LB 381, § 41.**

**59-705 Repealed. Laws 1981, LB 381, § 41.**

## ARTICLE 8

### UNLAWFUL RESTRAINT OF TRADE

#### Cross References

Charitable Gift Annuity Act, see section 59-1801.

#### Section

- 59-801. Restraint of trade or commerce; unlawful; penalty.
- 59-802. Monopolizing trade or commerce; unlawful; penalty.
- 59-803. Violation; property under contract forfeited.
- 59-804. Business of corporations or other companies; conduct; investigation by Attorney General; powers.
- 59-805. Restraint of trade; underselling; penalty.
- 59-806. Holding companies; when unlawful.
- 59-807. Books of record and papers; inspection by Attorney General.
- 59-808. Prohibited acts.
- 59-809. Violation; ouster.
- 59-810. Second or subsequent violations; ouster; injunction.
- 59-811. Second or subsequent violations; duty of Attorney General.
- 59-812. Violators; actions against; joinder of parties.
- 59-813. Violators; ouster; injunctions; business affected with a public interest; decree.
- 59-814. Violators; parties to employment contract; injunction.
- 59-815. Violation; penalty.
- 59-816. Violation; company officers; personal liability.
- 59-817. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 59-818. Seeking or receiving special advantages; transport of article; when unlawful; penalty.
- 59-819. Violations; jurisdiction; powers of courts.
- 59-820. Violations; civil proceedings; subpoena; may issue to any county.
- 59-821. Violations; recovery of actual or liquidated damages; attorney's fees.
- 59-821.01. Illegal overcharge or undercharge case.
- 59-822. Person, defined.
- 59-823. Violations; actions brought by state; advancement of cause; appeal.
- 59-824. Violations; proceedings; evidence; discovery; privilege not allowed.
- 59-825. Violations; proceedings; refusal to attend and testify; penalty.
- 59-826. Violations; proceedings; perjury; penalty.
- 59-827. Violations; proceedings; subornation of perjury.
- 59-828. Violations; prosecutions; duty of Attorney General and county attorney; evidence; discovery; immunity; scope and operation; proceeding by individual; costs.
- 59-829. Antitrust action; construction; federal law.
- 59-830. Actions taken pursuant to state or federal law; reliance on validity; criminal action; limitation.
- 59-831. Violations; recovery; disposition.

#### **59-801 Restraint of trade or commerce; unlawful; penalty.**

Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, within this state, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 1, p. 636; R.S.1913, § 4045; C.S.1922, § 3448; C.S.1929, § 59-801; R.S.1943, § 59-801; Laws 1977, LB 39, § 63; Laws 1983, LB 32, § 1.



1. Contracts in violation of section
2. Contracts not in violation of section
3. Miscellaneous

#### 1. Contracts in violation of section

A tying arrangement is an agreement by a party to sell one product, but only on the condition that the buyer also purchase a different, or tied, product, or agree that it will not purchase that product from another supplier. A tying arrangement violates Nebraska's unlawful restraint of trade act if the seller has appreciable economic power in the tying product market and if the arrangement affects a substantial volume of commerce in the tied market. A plaintiff alleging an unlawful tying arrangement must produce evidence of the following elements: (1) the existence of two distinct products or services; (2) sufficient economic power on the part of the defendant in the tying market to appreciably restrain competition in the tied product market, combined with the exercise of such power to coerce the purchaser to buy both items; and (3) the amount of commerce affected is not insubstantial. *Heath Consultants v. Precision Instruments*, 247 Neb. 267, 527 N.W.2d 596 (1995).

Claim that contract for construction of educational television system was in violation of this section raised but not decided. *Hamilton County Tel. Co. v. Northwestern Bell Tel. Co.*, 180 Neb. 1, 140 N.W.2d 834 (1966).

Monopolization in producing, selling, and distributing electricity is prohibited. *State ex rel. Spillman v. Interstate Power Co.*, 118 Neb. 756, 226 N.W. 427 (1929).

A combination or conspiracy between two or more persons against any person, firm, or corporation to prevent competition, which is carried into effect, is in violation of this section. *Marsh-Burke Co. v. Yost*, 98 Neb. 523, 153 N.W. 573 (1915).

A combination to prevent competition in insurance comes within prohibition of this section. *State v. American Surety Co.*, 91 Neb. 22, 135 N.W. 365, Ann. Cas. 1913B 973 (1912).

Agreement by lumber dealers to protect one another by asking higher price for same bill of lumber, or to divide territory and fix prices therein, is illegal and they can be enjoined. *State v. Adams Lumber Co.*, 81 Neb. 392, 116 N.W. 302 (1908).

Provisions of Junkin Act were applicable to combination of grain dealers even though there was another special act covering them. *State v. Omaha Elevator Co.*, 75 Neb. 637, 106 N.W. 979 (1906).

Under prior act, organization of lumber dealers to prevent competition was unlawful. *Cleland v. Anderson*, 66 Neb. 252, 92

N.W. 306 (1902), rev'd on other grounds, 75 Neb. 273, 105 N.W. 1092 (1905).

#### 2. Contracts not in violation of section

Contract with agent to sell seed corn upon a commission basis did not violate this section. *Bohy v. Pfister Hybrid Co.*, 179 Neb. 337, 138 N.W.2d 23 (1965).

Contract not to resell automobile without first offering it to vendor did not violate this section. *Stanford Motor Co. v. Westman*, 151 Neb. 850, 39 N.W.2d 841 (1949).

Refusal of dairy company to purchase milk from farmers that was hauled by plaintiff did not constitute violation of this section. *Ploog v. Roberts Dairy Co.*, 122 Neb. 540, 240 N.W. 764 (1932).

Refusal to furnish first-run films to theatre, where entire output of first-run films was already under contract, did not show conspiracy to stifle competition. *Goldberg v. Tri-States Theatre Corporation*, 126 F.2d 26 (8th Cir. 1942).

#### 3. Miscellaneous

A justifiable termination of a contractual relationship does not operate to create a liability, either under a contract theory or under the state antitrust statutes against one who terminates a contract. *Mike Pratt & Sons, Inc. v. Metalcraft, Inc.*, 222 Neb. 333, 383 N.W.2d 758 (1986).

Amendment in 1937 to this section, excepting contracts under Fair Trade Act, declared unconstitutional. *General Electric Co. v. J. L. Brandeis & Sons*, 159 Neb. 736, 68 N.W.2d 620 (1955); *McGraw Electric Co. v. Lewis & Smith Drug Co., Inc.*, 159 Neb. 703, 68 N.W.2d 608 (1955).

Where evidence fails to show an unlawful intent to conspire against and injure business of another by stifling competition action must fail for want of proof. *Hompes v. Goodrich Company*, 137 Neb. 84, 288 N.W. 367 (1939).

Indictment must allege that acts complained of were in restraint of trade within this state. *Howell v. State*, 83 Neb. 448, 120 N.W. 139 (1909).

Where agency agreement between insurance company and agency should have little or no effect on interests of policyholders, federal exemption from Sherman Act was not applicable. *Allied Financial Services, Inc. v. Foremost Ins. Co.*, 418 F.Supp. 157 (D. Neb. 1976).

### 59-802 Monopolizing trade or commerce; unlawful; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce, within this state, shall be deemed guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 2, p. 636; R.S.1913, § 4046; C.S.1922, § 3449; C.S.1929, § 59-802; R.S.1943, § 59-802; Laws 1977, LB 39, § 64; Laws 1983, LB 32, § 2.

Monopolization consists of two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. *Heath Consultants v. Precision Instruments*, 247 Neb. 267, 527 N.W.2d 596 (1995).

Contract not to resell automobile was not monopolistic in character. *Stanford Motor Co. v. Westman*, 151 Neb. 850, 39 N.W.2d 841 (1949).

One attempting to monopolize electricity business in state by underselling competitors at less than fair market value violates public policy. *State ex rel. Spillman v. Interstate Power Co.*, 118 Neb. 756, 226 N.W. 427 (1929).

### 59-803 Violation; property under contract forfeited.

Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in sections 59-801 and 59-802, shall be forfeited to the state.

**Source:** Laws 1905, c. 162, § 3, p. 636; R.S.1913, § 4047; C.S.1922, § 3450; C.S.1929, § 59-803; R.S.1943, § 59-803.

**59-804 Business of corporations or other companies; conduct; investigation by Attorney General; powers.**

The Attorney General of this state may at any time require of any corporation, joint-stock company, limited liability company, or other association engaged in business within this state, any statement he or she may think fit in regard to the conduct of its business. He or she may especially require any such corporation, joint-stock company, limited liability company, or other association to give a list of all contracts or transactions entered into within the twelve months preceding such requisition in which it has sold any article or product or carried any article or product within this state at a rate less than the ordinary market price if such article or product has been sold or carried by any other person than the party to such transaction. He or she may further require the reasons for such distinction and the circumstances attending the same.

**Source:** Laws 1905, c. 162, § 5, p. 638; R.S.1913, § 4049; C.S.1922, § 3452; C.S.1929, § 59-805; Laws 1939, c. 76, § 1, p. 312; C.S.Supp.,1941, § 59-805; R.S.1943, § 59-804; Laws 1993, LB 121, § 359.

The purpose of requiring statements to be filed with the Attorney General is to aid him in enforcing the Junkin Act. State v. American Surety Co., 91 Neb. 22, 135 N.W. 365, Ann. Cas. 1913B 973 (1912).

**59-805 Restraint of trade; underselling; penalty.**

Every person, corporation, joint-stock company, limited liability company, or other association engaged in business within this state which enters into any contract, combination, or conspiracy or which gives any direction or authority to do any act for the purpose of driving out of business any other person engaged therein or which for such purpose in the course of such business sells any article or product at less than its fair market value or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions or which sells any article upon a condition, contract, or understanding that it shall not be sold again by the purchaser or restrains such sale by the purchaser shall be deemed guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 6, p. 638; R.S.1913, § 4050; C.S.1922, § 3453; C.S.1929, § 59-806; R.S.1943, § 59-805; Laws 1977, LB 39, § 65; Laws 1983, LB 32, § 3; Laws 1993, LB 121, § 360.

In order for a plaintiff to successfully bring a claim that a defendant drove it out of business under this section, the plaintiff must show that the defendant is a person, corporation, joint-stock company, limited liability company, or other association which is engaged in business within Nebraska and that the defendant gave any direction or authority to do any act with the intent and for the purpose of driving the plaintiff out of business. Credit Bureau Servs. v. Experian Info. Solutions, 285 Neb. 526, 828 N.W.2d 147 (2013).

Claim that contract for construction of educational television system was in violation of this section raised but not decided. Hamilton County Tel. Co. v. Northwestern Bell Tel. Co., 180 Neb. 1, 140 N.W.2d 834 (1966).

Contract not to resell automobile without first offering it to vendor did not violate this section. Stanford Motor Co. v. Westman, 151 Neb. 850, 39 N.W.2d 841 (1949).

This section gives a cause of action to party injured in his business or property by any contract, combination or conspiracy, or direction given to do an act, for the purpose of driving party out of business. O. G. Pierce Co. v. Century Indemnity Co., 136 Neb. 78, 285 N.W. 91 (1939).

One attempting to monopolize electricity business in state by underselling competitors at less than fair market value violates public policy. State ex rel. Spillman v. Interstate Power Co., 118 Neb. 756, 226 N.W. 427 (1929).

**59-806 Holding companies; when unlawful.**

No corporation, joint-stock company, limited liability company, or other association shall engage in business within this state, a majority of whose stock is owned by or controlled or held in trust for any manufacturing or other corporation, which, in the course of its manufacture or production, conducts its business, or any part thereof, in a manner which would be prohibited by sections 59-801 to 59-831 if it were so conducted in the course of such business within this state.

**Source:** Laws 1905, c. 162, § 7, p. 639; R.S.1913, § 4051; C.S.1922, § 3454; C.S.1929, § 59-807; R.S.1943, § 59-806; Laws 1993, LB 121, § 361; Laws 2002, LB 1278, § 1.

**59-807 Books of record and papers; inspection by Attorney General.**

All the books of record and papers of every such corporation, joint-stock company, limited liability company, or other association engaged in business within this state shall be subject to inspection by the Attorney General of this state or by any agent he or she may designate for that purpose, and such corporation, joint-stock company, limited liability company, or other association shall, at such times as he or she shall prescribe, make such further returns, verified as aforesaid as shall be by him or her prescribed, either by general regulations or by special direction.

**Source:** Laws 1905, c. 162, § 8, p. 639; R.S.1913, § 4052; C.S.1922, § 3455; C.S.1929, § 59-808; R.S.1943, § 59-807; Laws 1993, LB 121, § 362.

**59-808 Prohibited acts.**

Any president, director, treasurer, officer, corporator, partner, member, associate, or agent of such corporation, joint-stock company, limited liability company, or other association who does in its behalf anything prohibited by sections 59-801 to 59-831 or who supports, votes for, aids and abets, or takes part in doing such action by the corporation, joint-stock company, limited liability company, or other association, or any instrumentality thereof, shall be liable to the penalties by law provided.

**Source:** Laws 1905, c. 162, § 9, p. 639; R.S.1913, § 4053; C.S.1922, § 3456; C.S.1929, § 59-809; R.S.1943, § 59-808; Laws 1993, LB 121, § 363; Laws 2002, LB 1278, § 2.

**59-809 Violation; ouster.**

No corporation, joint-stock company, limited liability company, or other association which manufactures or produces any article for sale or transportation within this state and which does any of the acts or things prohibited to be done by sections 59-801 to 59-831 shall engage in business within this state.

**Source:** Laws 1905, c. 162, § 10, p. 640; R.S.1913, § 4054; C.S.1922, § 3457; C.S.1929, § 59-810; R.S.1943, § 59-809; Laws 1993, LB 121, § 364; Laws 2002, LB 1278, § 3.

**59-810 Second or subsequent violations; ouster; injunction.**

Any corporation, joint-stock company, limited liability company, or other association which has been once adjudged to have violated the provisions of sections 59-801 to 59-831 by the final judgment of any court having jurisdiction of the question in any civil suit or proceeding in which such corporation, joint-stock company, limited liability company, or other association was a party, which thereafter violates any of such sections or which fails to make the returns herein required at the times specified shall no longer be allowed to engage in business within this state. Such prohibition shall only be enforced after such corporation, joint-stock company, limited liability company, or other association has been enjoined against further engaging in such business on an information or suit brought in a court of competent jurisdiction by the Attorney General in behalf of this state.

**Source:** Laws 1905, c. 162, § 11, p. 640; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-810; Laws 1993, LB 121, § 365; Laws 2002, LB 1278, § 4.

**59-811 Second or subsequent violations; duty of Attorney General.**

It shall be the duty of the Attorney General in such case, unless he or she is satisfied that such corporation, joint-stock company, limited liability company, or other association has desisted and abstained and will in the future desist and abstain from such violation, to enforce the provision by proceeding, either by information or by indictment, as he or she may in his or her discretion think best.

**Source:** Laws 1905, c. 162, § 11, p. 640; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-811; Laws 1993, LB 121, § 366.

**59-812 Violators; actions against; joinder of parties.**

Any corporation, joint-stock company, limited liability company, or other association which is charged with violating sections 59-801 to 59-831 and any president, director, treasurer, officer, limited liability company member, or agent thereof may be joined as a party in any proceeding, civil or criminal, to enforce such sections.

**Source:** Laws 1905, c. 162, § 11, p. 640; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-812; Laws 1993, LB 121, § 367; Laws 1994, LB 884, § 75; Laws 2002, LB 1278, § 5.

**59-813 Violators; ouster; injunctions; business affected with a public interest; decree.**

If, in the judgment of the Attorney General, such corporation, joint-stock company, limited liability company, or other association against which any civil proceeding may be instituted is one upon which the public is so depending that the interruption of its business will cause serious public loss or inconvenience, he or she may, in his or her discretion, refrain from proceeding to obtain a decree which will absolutely prevent the continuance of such business and may apply for a limited or conditional decree, or one to take effect at a future day, as the public interest shall seem to require. If, in the judgment of the court before whom such proceeding may be pending, the interruption of the business of the defendant corporation, joint-stock company, limited liability company, or other association will cause such serious public loss or inconvenience, the court

may decline to enter an absolute decree enjoining it against proceeding with its business and may enter a modified or conditional decree or a decree to take effect at a future time as justice shall require.

**Source:** Laws 1905, c. 162, § 11, p. 640; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-813; Laws 1993, LB 121, § 368.

Court may enter a modified or conditional decree or a decree to take effect at a future time. State v. American Surety Co., 91 Neb. 22, 135 N.W. 365, Ann. Cas. 1913B 973 (1912).

**59-814 Violators; parties to employment contract; injunction.**

The court may also, in its discretion, enjoin the officers, agents, or servants of such corporation, joint-stock company, or other association or the managers, agents, or servants of such limited liability company from continuing in its service and enjoin any such corporation, joint-stock company, limited liability company, or other association from continuing their employment therein as the case shall seem to require.

**Source:** Laws 1905, c. 162, § 11, p. 641; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-814; Laws 1993, LB 121, § 369; Laws 1994, LB 884, § 76.

**59-815 Violation; penalty.**

Any corporation, joint-stock company, limited liability company, or other association, and any president, director, treasurer, officer, corporator, partner, member, associate, or agent thereof who in its behalf engages in such business in violation of sections 59-801 to 59-831 shall for each offense, in addition to such penalty for contempt as the court in case of disobedience to its lawful order may impose, be guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 12, p. 641; R.S.1913, § 4056; C.S.1922, § 3459; C.S.1929, § 59-812; R.S.1943, § 59-815; Laws 1977, LB 39, § 66; Laws 1983, LB 32, § 4; Laws 1993, LB 121, § 370; Laws 2002, LB 1278, § 6.

**59-816 Violation; company officers; personal liability.**

Every president, treasurer, general manager, agent, or other person usually exercising the powers of such officers of any corporation, joint-stock company, limited liability company, or other association who has himself or herself, in its behalf, violated, united to violate, or voted for or consented to the violation of sections 59-801 to 59-831 shall thereafter be personally liable for all the debts and obligations of any such corporation, joint-stock company, limited liability company, or other association created while such person holds such office or agency, whether under the same or subsequent elections or appointments.

**Source:** Laws 1905, c. 162, § 13, p. 641; R.S.1913, § 4057; C.S.1922, § 3460; C.S.1929, § 59-813; R.S.1943, § 59-816; Laws 1993, LB 121, § 371; Laws 2002, LB 1278, § 7.

**59-817 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**59-818 Seeking or receiving special advantages; transport of article; when unlawful; penalty.**

If any joint-stock company, corporation, limited liability company, or combination or any agent thereof solicits, accepts, or receives any such rebate, concession, or service as is hereinbefore declared to be unlawful, it shall be unlawful thereafter to transport within this state any article owned or controlled by such company, corporation, limited liability company, or combination, or produced or manufactured by it, by whomsoever the same may be owned or controlled. If any such joint-stock company, corporation, limited liability company, or combination offers, grants, or gives any special prices, inducements, or advantages for the sale of articles produced, manufactured, owned, or controlled by it to purchasers in any particular locality in order to restrict or destroy competition in that locality in the sale of such articles, it shall be unlawful thereafter to transport within this state any article owned or controlled by it, or produced or manufactured by it, by whomsoever the same may be owned or controlled. The prohibition imposed under this section shall not apply to any article purchased bona fide before decree made in pursuance thereof against the joint-stock company, corporation, limited liability company, or combination producing, manufacturing, or theretofore owning or controlling the same, and even after decree, any such article may be relieved from the prohibition imposed under this section if the owner thereof shows to the satisfaction of the court having jurisdiction of the matter hereinafter provided that such article was purchased bona fide, without notice, and within thirty days after the entry of such decree. Any transportation company, and any officer, agent, or representative thereof, knowingly concerned in the transportation of articles within this state, contrary to the prohibitions of this section, shall be punished by a fine of not less than five thousand dollars.

**Source:** Laws 1905, c. 162, § 15, p. 642; R.S.1913, § 4059; C.S.1922, § 3462; C.S.1929, § 59-815; R.S.1943, § 59-818; Laws 1993, LB 121, § 372.

#### **59-819 Violations; jurisdiction; powers of courts.**

The several courts of record of this state having equity jurisdiction are hereby invested with jurisdiction to prevent and restrain all violations of sections 59-801 to 59-831 and especially the offering, granting, giving, soliciting, accepting, or receiving any such rebate, concession, or service by any person or persons and to prevent or restrain any such joint-stock company, corporation, limited liability company, association, or combination which has solicited, accepted, or received any such rebate, concession, or service or which has offered, granted, or given any special prices, inducements, or advantages in order to restrict or destroy competition in particular localities from engaging in commerce within this state. Such proceedings may be by way of complaint setting forth the cause of action and praying that the acts hereby made unlawful shall be enjoined or otherwise prohibited. When the parties complained of are duly notified of such complaint, the court shall proceed as soon as may be to the hearing and determination of the case, and upon such complaint and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just. The court may retain jurisdiction of the case after the decree for the purpose of such subsequent modification of the same as may be made to appear equitable and just in the premises.

**Source:** Laws 1905, c. 162, § 16, p. 643; R.S.1913, § 4060; C.S.1922, § 3463; C.S.1929, § 59-816; R.S.1943, § 59-819; Laws 1993, LB 121, § 373; Laws 2002, LB 1278, § 8.

**59-820 Violations; civil proceedings; subpoena; may issue to any county.**

Whenever it shall appear to the court before which any civil proceeding under sections 59-801 to 59-831 shall be pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be summoned whether they reside in the county where the court is held or not, and subpoenas to that end may be served in any county by the sheriff thereof.

**Source:** Laws 1905, c. 162, § 17, p. 644; R.S.1913, § 4061; C.S.1922, § 3464; C.S.1929, § 59-817; R.S.1943, § 59-820; Laws 2002, LB 1278, § 9.

**59-821 Violations; recovery of actual or liquidated damages; attorney's fees.**

Any person who is injured in his or her business or property by any other person or persons by a violation of sections 59-801 to 59-831, whether such injured person dealt directly or indirectly with the defendant, may bring a civil action in the district court in the county in which the defendant or defendants reside or are found, without respect to the amount in controversy, and shall recover actual damages or liquidated damages in an amount which bears a reasonable relation to the actual damages which have been sustained and which damages are not susceptible of measurement by ordinary pecuniary standards and the costs of suit, including a reasonable attorney's fee.

**Source:** Laws 1905, c. 162, § 18, p. 644; R.S.1913, § 4062; C.S.1922, § 3465; C.S.1929, § 59-818; R.S.1943, § 59-821; Laws 1974, LB 1028, § 1; Laws 2002, LB 1278, § 10.

Actual anticompetitive effects include, but are not limited to, reduction of output, increase in price, or deterioration in quality. *ACI Worldwide Corp. v. Baldwin Hackett & Meeks*, 296 Neb. 818, 896 N.W.2d 156 (2017).

Despite the broad remedial language of the Junkin Act, not every person claiming an injury from a Junkin Act violation can recover damages. *ACI Worldwide Corp. v. Baldwin Hackett & Meeks*, 296 Neb. 818, 896 N.W.2d 156 (2017).

To recover damages, a plaintiff must prove an antitrust injury. To constitute an antitrust injury, the injury must reflect the anticompetitive effect of the violation or the anticompetitive effects of anticompetitive acts made possible by the violation. *ACI Worldwide Corp. v. Baldwin Hackett & Meeks*, 296 Neb. 818, 896 N.W.2d 156 (2017).

Because the remedial provisions of the Junkin Act and Clayton Act are so similar, section 59-829 requires Nebraska courts to follow the federal courts' construction of the Clayton Act. *Kanne v. Visa U.S.A.*, 272 Neb. 489, 723 N.W.2d 293 (2006).

The 2002 amendment to this section did not reject the application of standing requirements to damages under this section. It simply removed the automatic bar against indirect purchaser actions announced in *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 97 S. Ct. 2061, 52 L. Ed. 2d 707 (1977). It did not eliminate

separate and distinct standing requirements. *Kanne v. Visa U.S.A.*, 272 Neb. 489, 723 N.W.2d 293 (2006).

Where jury by special verdict found that defendant had conspired with plaintiff's former employee to injure plaintiff's business, restrain trade, create a monopoly, and acquire plaintiff's business by unfair business practices, this section permits plaintiff to recover a reasonable attorney fee. *Diesel Service, Inc. v. Accessory Sales, Inc.*, 210 Neb. 797, 317 N.W.2d 719 (1982).

This section provides for damages to party injured in its business or property by reason of unlawful conspiracy or combination. *O. G. Pierce Co. v. Century Indemnity Co.*, 136 Neb. 78, 285 N.W. 91 (1939).

Triple damages could not be recovered in subsequent suit when waived in original action. *Marsh-Burke Co. v. Yost*, 102 Neb. 814, 170 N.W. 172 (1918).

When plaintiff prayed for compensatory damages only and remitted part of verdict to avoid new trial, right to claim triple damages was waived thereby. *Marsh-Burke Co. v. Yost*, 98 Neb. 523, 153 N.W. 573 (1915).

Where agency agreement between insurance company and agency should have little or no effect on interests of policyholders, federal exemption from Sherman Act was not applicable. *Allied Financial Services, Inc. v. Foremost Ins. Co.*, 418 F.Supp. 157 (D. Neb. 1976).

**59-821.01 Illegal overcharge or undercharge case.**

In an illegal overcharge or undercharge case in which claims are asserted by both parties who dealt directly with the defendant and parties who dealt indirectly with the defendant or any combination thereof:

(1) A defendant may prove, as a partial or complete defense to a claim for damages under sections 59-801 to 59-831 and this section, that the illegal overcharge or undercharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of such damages; and

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(2) The court may transfer and consolidate such claims, apportion damages, and delay disbursement of damages to avoid multiplicity of suits and duplication of recovery of damages and to obtain substantial fairness.

**Source:** Laws 2002, LB 1278, § 11.

**59-822 Person, defined.**

The words person or persons, as used in sections 59-801 to 59-831, shall be deemed to include all corporations, associations, limited liability companies, combinations, or concerns whatsoever.

**Source:** Laws 1905, c. 162, § 19, p. 644; R.S.1913, § 4063; C.S.1922, § 3466; C.S.1929, § 59-819; R.S.1943, § 59-822; Laws 1993, LB 121, § 374; Laws 2002, LB 1278, § 12.

The word person includes a corporation. O. G. Pierce Co. v. Century Indemnity Co., 136 Neb. 78, 285 N.W. 91 (1939).

**59-823 Violations; actions brought by state; advancement of cause; appeal.**

When any suit in equity is brought in any court under sections 59-801 to 59-831 in which the state is complainant, the Attorney General may file with the clerk of such court a certificate that, in his or her opinion, the case is of general public importance, a copy of which certificate shall be immediately furnished by such clerk to the judge of the court in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited and be assigned for hearing at the earliest practicable day. An appeal from the final decree of the court shall lie to the Court of Appeals and shall be taken within thirty days after the entry of such decree or final order or within thirty days after entry of the order overruling a motion for a new trial in such case.

**Source:** Laws 1905, c. 162, § 20, p. 644; R.S.1913, § 4064; C.S.1922, § 3467; C.S.1929, § 59-820; R.S.1943, § 59-823; Laws 1961, c. 305, § 2, p. 960; Laws 1987, LB 33, § 11; Laws 1991, LB 732, § 120; Laws 1999, LB 43, § 26; Laws 2002, LB 1278, § 13.

**59-824 Violations; proceedings; evidence; discovery; privilege not allowed.**

In all prosecutions, hearings, and proceedings under sections 59-801 to 59-831, whether civil or criminal, no person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and documents before the courts of this state, or in obedience to the subpoena of the same, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of such person, may tend to criminate such person or subject such person to a penalty or forfeiture.

**Source:** Laws 1905, c. 162, § 21, p. 644; R.S.1913, § 4065; C.S.1922, § 3468; C.S.1929, § 59-821; R.S.1943, § 59-824; Laws 2002, LB 1278, § 14.

**59-825 Violations; proceedings; refusal to attend and testify; penalty.**

Any person who shall neglect or refuse to make returns, attend and testify or answer any lawful requirement hereinbefore provided for, or produce books, papers, contracts, agreements, and documents, if in his or her custody, control, or power to do so, in obedience to the subpoena of the courts or lawful



requirements of the Attorney General, shall be deemed guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 21, p. 645; R.S.1913, § 4065; C.S.1922, § 3468; C.S.1929, § 59-821; R.S.1943, § 59-825; Laws 1977, LB 39, § 67; Laws 1983, LB 32, § 5.

**59-826 Violations; proceedings; perjury; penalty.**

Whoever knowingly swears to a return or report required by sections 59-801 to 59-831 that is false in any material particular, or knowingly swears to an answer to any of the requirements of such sections that is false in any material particular, shall be deemed guilty of perjury and punished as provided by the laws of this state in reference to perjury.

**Source:** Laws 1905, c. 162, § 21, p. 645; R.S.1913, § 4065; C.S.1922, § 3468; C.S.1929, § 59-821; R.S.1943, § 59-826; Laws 2002, LB 1278, § 15.

**59-827 Violations; proceedings; subornation of perjury.**

Whoever shall knowingly prepare, or cause to be prepared, a report, return, or answer required by sections 59-801 to 59-831 that is false, as aforesaid, shall be guilty of subornation of perjury and punished by law.

**Source:** Laws 1905, c. 162, § 21, p. 645; R.S.1913, § 4065; C.S.1922, § 3468; C.S.1929, § 59-821; R.S.1943, § 59-827; Laws 2002, LB 1278, § 16.

**59-828 Violations; prosecutions; duty of Attorney General and county attorney; evidence; discovery; immunity; scope and operation; proceeding by individual; costs.**

(1) It is hereby made the duty of the Attorney General and the county attorney of each county under the direction of the Attorney General to institute and prosecute such proceedings as may be necessary to carry into effect sections 59-801 to 59-831. No person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under such sections. No person testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

(2) It shall be lawful for any person to institute proceedings pursuant to sections 59-801 to 59-831, at his or her own expense and by his or her own attorney, but in the action so brought by such person no recovery for costs and disbursements shall be had against the state.

**Source:** Laws 1905, c. 162, § 22, p. 645; R.S.1913, § 4066; C.S.1922, § 3469; C.S.1929, § 59-822; R.S.1943, § 59-828; Laws 1974, LB 1028, § 2; Laws 2002, LB 1278, § 17.

Attorney General is not authorized to bring action in name of state in ordinary labor disputes, but may do so to restrain willful and illegal acts affecting public generally. State v. Employers of Labor, 102 Neb. 768, 169 N.W. 717 (1918).

**59-829 Antitrust action; construction; federal law.**

When any provision of sections 59-801 to 59-831 and sections 84-211 to 84-214 or any provision of Chapter 59 is the same as or similar to the language

of a federal antitrust law, the courts of this state in construing such sections or chapter shall follow the construction given to the federal law by the federal courts.

**Source:** Laws 1974, LB 1028, § 3; Laws 2002, LB 1278, § 18.

Because the remedial provisions of the Junkin Act and Clayton Act are so similar, this section requires Nebraska courts to follow the federal courts' construction of the Clayton Act. *Kanne v. Visa U.S.A.*, 272 Neb. 489, 723 N.W.2d 293 (2006).

The purpose of this section is to achieve uniform application of the state and federal laws regarding monopolistic practices. The goal is to establish a uniform standard of conduct so that

businesses will know what conduct is permitted and to protect the consumer from illegal conduct. *Arthur v. Microsoft Corp.*, 267 Neb. 586, 676 N.W.2d 29 (2004).

Federal cases interpreting federal legislation which is nearly identical to a state act constitute persuasive authority. *Heath Consultants v. Precision Instruments*, 247 Neb. 267, 527 N.W.2d 596 (1995).

**59-830 Actions taken pursuant to state or federal law; reliance on validity; criminal action; limitation.**

No criminal action may be maintained under sections 59-801 to 59-831 against any person, corporation, organization, limited liability company, or association for acting pursuant to and under the authority of any state or federal law. It is the purpose of this section to reaffirm that a person may rely on the validity of any state or federal law until declared invalid.

**Source:** Laws 1977, LB 524, § 1; Laws 1993, LB 121, § 375; Laws 2002, LB 1278, § 19.

**59-831 Violations; recovery; disposition.**

When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under sections 59-801 to 59-831, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under sections 59-801 to 59-831 shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended; and

(2) When the Attorney General makes recovery pursuant to sections 59-801 to 59-831 on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended.

**Source:** Laws 1983, LB 32, § 7; Laws 2002, LB 1278, § 20.

**ARTICLE 9**

**REGULATION OF PUBLIC MARKETS**

Section

- 59-901. Repealed. Laws 1974, LB 1028, § 32.
- 59-902. Repealed. Laws 1974, LB 1028, § 32.
- 59-903. Repealed. Laws 1974, LB 1028, § 32.

**FAIR TRADE ACT**

**§ 59-1108**

Section

59-904. Repealed. Laws 1974, LB 1028, § 32.

**59-901 Repealed. Laws 1974, LB 1028, § 32.**

**59-902 Repealed. Laws 1974, LB 1028, § 32.**

**59-903 Repealed. Laws 1974, LB 1028, § 32.**

**59-904 Repealed. Laws 1974, LB 1028, § 32.**

**ARTICLE 10**

**DAIRY INDUSTRY**

Section

59-1001. Repealed. Laws 1974, LB 1028, § 32.

59-1002. Repealed. Laws 1974, LB 1028, § 32.

**59-1001 Repealed. Laws 1974, LB 1028, § 32.**

**59-1002 Repealed. Laws 1974, LB 1028, § 32.**

**ARTICLE 11**

**FAIR TRADE ACT**

Section

59-1101. Repealed. Laws 1959, c. 280, § 1.

59-1102. Repealed. Laws 1959, c. 280, § 1.

59-1103. Repealed. Laws 1959, c. 280, § 1.

59-1104. Repealed. Laws 1959, c. 280, § 1.

59-1105. Repealed. Laws 1959, c. 280, § 1.

59-1106. Repealed. Laws 1959, c. 280, § 1.

59-1107. Repealed. Laws 1959, c. 280, § 1.

59-1108. Repealed. Laws 1959, c. 280, § 1.

**59-1101 Repealed. Laws 1959, c. 280, § 1.**

**59-1102 Repealed. Laws 1959, c. 280, § 1.**

**59-1103 Repealed. Laws 1959, c. 280, § 1.**

**59-1104 Repealed. Laws 1959, c. 280, § 1.**

**59-1105 Repealed. Laws 1959, c. 280, § 1.**

**59-1106 Repealed. Laws 1959, c. 280, § 1.**

**59-1107 Repealed. Laws 1959, c. 280, § 1.**

**59-1108 Repealed. Laws 1959, c. 280, § 1.**

**ARTICLE 12**

**UNFAIR SALES ACT**

Section

59-1201. Repealed. Laws 1972, LB 1410, § 3.

59-1202. Repealed. Laws 1972, LB 1410, § 3.

59-1203. Repealed. Laws 1972, LB 1410, § 3.

**§ 59-1201 MONOPOLIES AND UNLAWFUL RESTRAINT OF TRADE**

Section

- 59-1204. Repealed. Laws 1972, LB 1410, § 3.
- 59-1205. Repealed. Laws 1972, LB 1410, § 3.
- 59-1206. Repealed. Laws 1972, LB 1410, § 3.

**59-1201 Repealed. Laws 1972, LB 1410, § 3.**

**59-1202 Repealed. Laws 1972, LB 1410, § 3.**

**59-1203 Repealed. Laws 1972, LB 1410, § 3.**

**59-1204 Repealed. Laws 1972, LB 1410, § 3.**

**59-1205 Repealed. Laws 1972, LB 1410, § 3.**

**59-1206 Repealed. Laws 1972, LB 1410, § 3.**

**ARTICLE 13**

**MONOPOLY RELATING TO MUSICAL COMPOSITIONS**

Section

- 59-1301. Repealed. Laws 1945, c. 139, § 9.
- 59-1302. Repealed. Laws 1945, c. 139, § 9.
- 59-1303. Repealed. Laws 1945, c. 139, § 9.
- 59-1304. Repealed. Laws 1945, c. 139, § 9.
- 59-1305. Repealed. Laws 1945, c. 139, § 9.
- 59-1306. Repealed. Laws 1945, c. 139, § 9.
- 59-1307. Repealed. Laws 1945, c. 139, § 9.
- 59-1308. Repealed. Laws 1945, c. 139, § 9.
- 59-1309. Repealed. Laws 1945, c. 139, § 9.
- 59-1310. Repealed. Laws 1945, c. 139, § 9.
- 59-1311. Repealed. Laws 1945, c. 139, § 9.
- 59-1312. Repealed. Laws 1945, c. 139, § 9.
- 59-1313. Repealed. Laws 1945, c. 139, § 9.
- 59-1314. Repealed. Laws 1945, c. 139, § 9.
- 59-1315. Repealed. Laws 1945, c. 139, § 9.
- 59-1316. Repealed. Laws 1945, c. 139, § 9.
- 59-1317. Repealed. Laws 1945, c. 139, § 9.
- 59-1318. Repealed. Laws 1945, c. 139, § 9.
- 59-1319. Repealed. Laws 1945, c. 139, § 9.
- 59-1320. Repealed. Laws 1945, c. 139, § 9.

**59-1301 Repealed. Laws 1945, c. 139, § 9.**

**59-1302 Repealed. Laws 1945, c. 139, § 9.**

**59-1303 Repealed. Laws 1945, c. 139, § 9.**

**59-1304 Repealed. Laws 1945, c. 139, § 9.**

**59-1305 Repealed. Laws 1945, c. 139, § 9.**

**59-1306 Repealed. Laws 1945, c. 139, § 9.**

**59-1307 Repealed. Laws 1945, c. 139, § 9.**

**59-1308 Repealed. Laws 1945, c. 139, § 9.**

**59-1309 Repealed. Laws 1945, c. 139, § 9.**

**59-1310 Repealed. Laws 1945, c. 139, § 9.**

**59-1311 Repealed. Laws 1945, c. 139, § 9.**

**59-1312 Repealed. Laws 1945, c. 139, § 9.**

**59-1313 Repealed. Laws 1945, c. 139, § 9.**

**59-1314 Repealed. Laws 1945, c. 139, § 9.**

**59-1315 Repealed. Laws 1945, c. 139, § 9.**

**59-1316 Repealed. Laws 1945, c. 139, § 9.**

**59-1317 Repealed. Laws 1945, c. 139, § 9.**

**59-1318 Repealed. Laws 1945, c. 139, § 9.**

**59-1319 Repealed. Laws 1945, c. 139, § 9.**

**59-1320 Repealed. Laws 1945, c. 139, § 9.**

#### ARTICLE 14

#### MUSICAL COMPOSITIONS

Section	
59-1401.	Act, how cited.
59-1402.	Terms, defined.
59-1403.	License; tax; Department of Revenue; rules and regulations.
59-1403.01.	Music licensing agency; registration; fine; list of members.
59-1403.02.	Music licensing agency; duties; contract requirements.
59-1403.03.	Music licensing agency; disclosures; representative or agent; prohibited acts.
59-1403.04.	Department of Revenue; duties.
59-1403.05.	Act, how construed.
59-1404.	Copyright owner; assigns; licensees; benefits.
59-1405.	Discrimination in price; price changes; exceptions.
59-1406.	Violations; penalty.

#### **59-1401 Act, how cited.**

Sections 59-1401 to 59-1406 shall be known and may be cited as the Music Licensing Agency Act.

**Source:** Laws 1945, c. 139, § 1, p. 439; Laws 1993, LB 121, § 376; Laws 2018, LB1120, § 30.

#### **59-1402 Terms, defined.**

For purposes of the Music Licensing Agency Act:

(1) Copyright owner means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States pursuant to 17 U.S.C. 101 et seq., as such sections existed on January 1, 2018, and does not include the owner of a copyright in a motion picture or audiovisual work or in part of a motion picture or audiovisual work;

(2) Music licensing agency means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners;

(3) Performing right means the right to perform a copyrighted nondramatic musical work publicly for profit;

(4) Person means any individual, resident or nonresident of this state, and every domestic, foreign, or alien partnership, limited liability company, society, association, corporation, or music licensing agency;

(5) Proprietor means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, multi-family residential dwelling, or other similar place of business or professional office located in this state in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of members of the public there assembled; and

(6) Royalty means the fees payable to a copyright owner for a performing right.

**Source:** Laws 2018, LB1120, § 31; Laws 2019, LB203, § 1.

**59-1403 License; tax; Department of Revenue; rules and regulations.**

There is hereby levied and there shall be collected a tax for the act or privilege of selling, licensing, or otherwise disposing in this state of performing rights in any musical composition, which has been copyrighted under the laws of the United States, in an amount equal to three percent of the gross receipts of all such sales, licenses, or other dispositions of performing rights in this state, payable to the Department of Revenue annually on or before March 15 of each year with respect to the gross receipts of the preceding calendar year. The department shall adopt and promulgate rules and regulations not in conflict with this section, as well as a form of return and any other forms necessary to carry out this section.

**Source:** Laws 1945, c. 139, § 3, p. 440; Laws 1947, c. 253, § 1, p. 831; Laws 2018, LB1120, § 32.

**59-1403.01 Music licensing agency; registration; fine; list of members.**

(1) Beginning January 1, 2019, a music licensing agency shall not license or attempt to license the use of or collect or attempt to collect any compensation with regard to any sale, license, or other disposition of a performing right unless the music licensing agency registers and files annually, on or before February 15, with the Department of Revenue an electronic copy of each variation of the performing-rights agreement providing for the payment of royalties made available from the music licensing agency to any proprietor within this state. The registration shall be valid for the calendar year. The department shall impose a fine for failure to renew or register in the amount of ten thousand dollars for each forty-five-day period which has passed since February 15 of the registration year if a music licensing agency fails to renew a registration or engages in business without registration.

(2) Each registered music licensing agency shall make available electronically to proprietors the most current available list of members and affiliates represented by the music licensing agency and the most current available list of the performed works that the music licensing agency licenses.

**Source:** Laws 2018, LB1120, § 33.

**59-1403.02 Music licensing agency; duties; contract requirements.**

(1) Beginning January 1, 2019, no music licensing agency may enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at least seventy-two hours prior to the execution of that contract it provides to the proprietor or the proprietor's employees, in writing, the following:

(a) A schedule of the rates and terms of royalties under the contract; and

(b) Notice that the proprietor is entitled to the information filed with the Department of Revenue pursuant to section 59-1403.01.

(2) Beginning January 1, 2019, a contract for the payment of royalties executed in this state shall:

(a) Be in writing;

(b) Be signed by the parties; and

(c) Include, at least, the following information:

(i) The proprietor's name and business address;

(ii) The name and location of each place of business to which the contract applies;

(iii) The duration of the contract; and

(iv) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of the contract.

**Source:** Laws 2018, LB1120, § 34.

**59-1403.03 Music licensing agency; disclosures; representative or agent; prohibited acts.**

(1) Beginning January 1, 2019, before seeking payment or a contract for payment of royalties for the use of copyrighted works by that proprietor, a representative or agent for a music licensing agency shall identify himself or herself to the proprietor or the proprietor's employees, disclose that he or she is acting on behalf of a music licensing agency, and disclose the purpose for being on the premises.

(2) A representative or agent of a music licensing agency shall not:

(a) Use obscene, abusive, or profane language when communicating with a proprietor or his or her employees;

(b) Communicate by telephone or in person with a proprietor other than at the proprietor's place of business during the hours when the proprietor's business is open to the public unless otherwise authorized by the proprietor or the proprietor's agents, employees, or representatives;

(c) Engage in any coercive conduct, act, or practice that is substantially disruptive to a proprietor's business;

(d) Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or

(e) Communicate with an unlicensed proprietor about licensing performances of musical works at the proprietor's establishment after receiving notification in writing from an attorney representing the proprietor that all further communications related to the licensing of the proprietor's establishment by the music licensing agency should be addressed to the attorney. However, the music licensing agency may resume communicating directly with the proprietor if the attorney fails to respond to communications from the music licensing agency

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within sixty days or the attorney becomes nonresponsive for a period of sixty days or more.

**Source:** Laws 2018, LB1120, § 35.

**59-1403.04 Department of Revenue; duties.**

The Department of Revenue shall inform proprietors of their rights and responsibilities regarding the public performance of copyrighted music as part of the business licensing service.

**Source:** Laws 2018, LB1120, § 36.

**59-1403.05 Act, how construed.**

Nothing in the Music Licensing Agency Act may be construed to prohibit a music licensing agency from conducting an investigation to determine the existence of music use by a proprietor's business or informing a proprietor of the proprietor's obligations under the copyright laws of the United States pursuant to 17 U.S.C. 101 et seq., as such sections existed on January 1, 2018.

**Source:** Laws 2018, LB1120, § 37.

**59-1404 Copyright owner; assigns; licensees; benefits.**

Upon compliance with the Music Licensing Agency Act, the copyright owner, and his or her assigns and licensees, of a nondramatic musical work copyrighted under the laws of the United States shall be entitled to all the benefits thereof.

**Source:** Laws 1945, c. 139, § 4, p. 440; Laws 2018, LB1120, § 38.

**59-1405 Discrimination in price; price changes; exceptions.**

All music licensing agencies who sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any copyrighted musical composition shall refrain from discriminating in price or terms between licensees similarly situated, except that differentials based upon applicable business factors which justify different prices or terms shall not be considered discriminations within the meaning of this section. Nothing contained in this section shall prevent price changes from time to time by reason of changing conditions affecting the market for or marketability of performing rights.

**Source:** Laws 1945, c. 139, § 5, p. 440; Laws 2018, LB1120, § 39.

**59-1406 Violations; penalty.**

Any person violating the Music Licensing Agency Act shall be fined an amount not less than five hundred dollars and not more than two thousand dollars. Multiple violations on a single day may be considered separate violations.

**Source:** Laws 1945, c. 139, § 6, p. 441; Laws 2018, LB1120, § 40.

**ARTICLE 15  
CIGARETTE SALES**

**Cross References**

**Vending machines**, use restricted, see section 28-1429.02.



## (a) UNFAIR CIGARETTE SALES ACT

## Section

- 59-1501. Act, how cited.
- 59-1502. Terms, defined.
- 59-1503. Sale of cigarettes; unlawful acts; enumerated.
- 59-1504. Sale of cigarettes; cost to retailer; filing with division.
- 59-1505. Sale of cigarettes; cost to wholesaler; filing with division.
- 59-1506. Sale of cigarettes; advertising, offers for sale, sales; combination sales.
- 59-1507. Sale of cigarettes; sale by wholesaler to another wholesaler; sale price; limitation.
- 59-1508. Sale of cigarettes; transactions excepted.
- 59-1509. Sale of cigarettes; transactions permitted to meet lawful competition.
- 59-1510. Sale of cigarettes; contracts void.
- 59-1511. Sale of cigarettes; admissible evidence.
- 59-1512. Sale of cigarettes; sales outside ordinary channels.
- 59-1513. Sale of cigarettes; cost survey.
- 59-1514. Cigarette tax division; rules and regulations.
- 59-1515. Sale of cigarettes; actions; remedies.
- 59-1516. Revocation of license; procedure; appeal.
- 59-1517. Cigarette tax division; enforcement of sections.
- 59-1518. Cigarette tax division; powers vested by other laws.

## (b) GREY MARKET SALES

- 59-1519. Terms, defined.
- 59-1520. Prohibited acts.
- 59-1521. Exemptions.
- 59-1522. Violation; penalty.
- 59-1523. Disciplinary actions; contraband.
- 59-1524. Deceptive trade practice.
- 59-1525. Enforcement.

## (a) UNFAIR CIGARETTE SALES ACT

**59-1501 Act, how cited.**

Sections 59-1501 to 59-1518 shall be known and may be cited as the Unfair Cigarette Sales Act.

**Source:** Laws 1965, c. 364, § 1, p. 1184.

**59-1502 Terms, defined.**

As used in the Unfair Cigarette Sales Act, unless the context otherwise requires:

(1) Person shall mean and include any individual, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, or conservator;

(2) Cigarettes shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco;

(3) Sale shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means whatsoever;

(4) Wholesaler shall include any person who:

(a) Purchases cigarettes directly from the manufacturer;

(b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only; or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing in the Unfair Cigarette Sales Act shall prevent a person from qualifying in different capacities as both a wholesaler and retailer under the applicable provisions of the act;

(5) Retailer shall mean and include any person who operates a store, stand, booth, or concession for the purpose of making sales of cigarettes at retail, including sales through vending machines;

(6) Sell at retail, sale at retail, and retail sales shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use, including sales through vending machines;

(7) Sell at wholesale, sale at wholesale, and wholesale sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale;

(8) Basic cost of cigarettes shall mean the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, without subtracting any discounts, to which shall be added the full value of any stamps which may be required by any cigarette tax act of this state and by ordinance of any municipality of this state in effect or hereafter enacted, if not already included by the manufacturer in his or her list price;

(9) Division shall mean the cigarette tax division of the Tax Commissioner; and

(10) Business day shall mean any day other than a Sunday or legal holiday.

**Source:** Laws 1965, c. 364, § 2, p. 1184; Laws 1967, c. 378, § 1, p. 1187; Laws 1987, LB 730, § 26; Laws 1993, LB 121, § 377; Laws 2008, LB898, § 1.

#### Cross References

Cigarette tax, see Chapter 77, article 26.

### 59-1503 Sale of cigarettes; unlawful acts; enumerated.

It shall be unlawful and a violation of sections 59-1501 to 59-1518:

(1) For any retailer, wholesaler or other person with intent to injure competitors or destroy or substantially lessen competition (a) to advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost as defined in sections 59-1501 to 59-1518, to such a retailer or wholesaler, as the case may be, or (b) to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which

such rebate or concession may lawfully be given which is sold by such wholesaler or retailer in the ordinary course of his trade or business; *Provided*, that for the purpose of sections 59-1501 to 59-1518, a so-called tie-in sale of cigarettes, whereby in conjunction with the purchase of cigarettes, at a price which would not otherwise be less than cost to the vendor, the purchaser is offered other merchandise or other thing of value, without charge or at a charge less than the fair and reasonable retail value of such other merchandise or thing of value, such transaction shall be deemed a rebate or concession; or

(2) For any retailer, with intent to injure competitors or destroy or substantially lessen competition, (a) to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than cost to wholesaler as defined in sections 59-1501 to 59-1518, or (b) to induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatsoever in connection with the purchase of cigarettes.

Any retailer or wholesaler or agent thereof who violates the provisions of this section is a disorderly person and shall be guilty of a Class V misdemeanor.

Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatsoever in connection with the sale of cigarettes, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by such wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competition and to destroy or substantially lessen competition.

**Source:** Laws 1965, c. 364, § 3, p. 1186; Laws 1977, LB 39, § 68.

**59-1504 Sale of cigarettes; cost to retailer; filing with division.**

(1) Cost to the retailer shall mean the basic cost of cigarettes to the retailer plus the cost of doing business by the retailer, as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising; *Provided*, that any retailer who purchases from the manufacturer at or less than or at about the price normally and usually charged for purchases in wholesale quantities shall, in determining cost to the retailer, pursuant to this subsection, add the cost of doing business by the wholesaler, as defined in section 59-1505, to the basic cost of cigarettes to such retailer, as well as the cost of doing business by the retailer.

(2) In the absence of the filing with the division of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be eight percent of the basic cost of cigarettes to the retailer.

(3) In the absence of the filing with the division of satisfactory proof of a lesser or higher cost of doing business, the cost of doing business by the

retailer, who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchase by a retailer but also, in whole or in part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be eight percent of the sum of the basic cost of cigarettes and the cost of doing business by the wholesaler.

**Source:** Laws 1965, c. 364, § 4, p. 1187.

**59-1505 Sale of cigarettes; cost to wholesaler; filing with division.**

(1) Cost to the wholesaler shall mean the basic cost of cigarettes to the wholesaler plus the cost of doing business by the wholesaler, as evidenced by the standards and methods of accounting regularly employed by him or her in his or her allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

(2) In the absence of the filing with the division of satisfactory proof of a lesser or higher cost of doing business by the wholesaler making the sale, the cost of doing business by the wholesaler shall be presumed to be four and three-quarters percent of the basic cost of cigarettes to the wholesaler.

**Source:** Laws 1965, c. 364, § 5, p. 1188; Laws 2008, LB898, § 2.

**59-1506 Sale of cigarettes; advertising, offers for sale, sales; combination sales.**

In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any concession of any kind whatsoever, whether it be coupons or otherwise, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by such wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's selling price shall not be below the cost to the retailer or the cost to the wholesaler, respectively, of the cigarettes included in such transactions, and the invoice cost, whether the same be paid by the retailer, the wholesaler or any other person, of all other articles, products, commodities and concessions included in such transactions, to which invoice cost shall be added the cost of doing business in the case of the wholesaler and the retailer, respectively, as such cost is defined in sections 59-1504 and 59-1505.

**Source:** Laws 1965, c. 364, § 6, p. 1189.

**59-1507 Sale of cigarettes; sale by wholesaler to another wholesaler; sale price; limitation.**

When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter cost to the wholesaler, as provided by section 59-1505, except that no such sale shall be made at a price less than the basic cost of cigarettes, as defined in section 59-1502, but the latter wholesaler, upon resale to a retailer or for consumption

or use, shall be deemed to be the wholesaler governed by the provisions of sections 59-1504 and 59-1505.

**Source:** Laws 1965, c. 364, § 7, p. 1189.

**59-1508 Sale of cigarettes; transactions excepted.**

The provisions of sections 59-1501 to 59-1518 shall not apply to sales at retail or sales at wholesale made (1) as an isolated transaction and not in the usual course of business; (2) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and such advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (3) where cigarettes are advertised, offered for sale, or sold as imperfect or damaged, and such advertising, offer to sell or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (4) where cigarettes are sold upon the final liquidation of a business; or (5) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

**Source:** Laws 1965, c. 364, § 8, p. 1189.

**59-1509 Sale of cigarettes; transactions permitted to meet lawful competition.**

(1) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article in this state at cost to him as a retailer as prescribed in sections 59-1501 to 59-1518. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in sections 59-1501 to 59-1518. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 59-1508 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankruptcy sale be considered the price of a competitor within the meaning of this section.

(2) In the absence of proof of the price of a competitor, under this section, the lowest cost to the retailer, or the lowest cost to the wholesaler, as the case may be, determined by any cost survey, made pursuant to section 59-1513, may be deemed the price of a competitor within the meaning of this section.

**Source:** Laws 1965, c. 364, § 9, p. 1190.

**59-1510 Sale of cigarettes; contracts void.**

Any contract, expressed or implied, made by any person in violation of any of the provisions of sections 59-1501 to 59-1518, is declared to be an illegal and void contract and no recovery thereon shall be made.

**Source:** Laws 1965, c. 364, § 10, p. 1190.

**59-1511 Sale of cigarettes; admissible evidence.**

(1) In determining cost to the retailer and cost to the wholesaler the division or a court shall receive and consider as bearing on the good faith of such cost, evidence tending to show that any person complained against under any of the provisions of sections 59-1501 to 59-1518 purchased cigarettes, with respect to

the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the good faith of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(2) Merchandise given free or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes, or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

**Source:** Laws 1965, c. 364, § 11, p. 1191.

**59-1512 Sale of cigarettes; sales outside ordinary channels.**

In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of such cigarettes purchased at a forced, bankrupt, or closeout sale, or other sale outside the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased through the ordinary channels of trade.

**Source:** Laws 1965, c. 364, § 12, p. 1191.

**59-1513 Sale of cigarettes; cost survey.**

Where a cost survey, pursuant to recognized statistical and cost-accounting practices, has been made for the trading area in which the offense is committed, to establish the lowest cost to the retailer and the lowest cost to the wholesaler, such cost survey shall be deemed competent evidence to be used in proving the cost to the person complained against within the provisions of sections 59-1501 to 59-1518.

**Source:** Laws 1965, c. 364, § 13, p. 1191.

**59-1514 Cigarette tax division; rules and regulations.**

The division may adopt rules and regulations for the enforcement of the provisions of sections 59-1501 to 59-1518 and may undertake a cost survey as provided for in section 59-1513.

**Source:** Laws 1965, c. 364, § 14, p. 1191.

**59-1515 Sale of cigarettes; actions; remedies.**

(1) An action may be maintained in any court of equitable jurisdiction to prevent, restrain or enjoin a violation or threatened violation of any of the provisions of sections 59-1501 to 59-1518. Such an action may be instituted by any person injured by any violation or threatened violation of sections 59-1501 to 59-1518 or by the Attorney General, upon the request of the division. If in such action a violation or threatened violation of the provisions of sections 59-1501 to 59-1518 shall be established, the court shall enjoin and restrain, or otherwise prohibit such violation or threatened violation. In such action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in such action, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, shall be

entitled to recover from the defendant the actual damages sustained by such plaintiff.

(2) If no injunctive relief is sought or required, any person injured by a violation of sections 59-1501 to 59-1518 may maintain an action for damages and costs of suit in any court of competent jurisdiction.

**Source:** Laws 1965, c. 364, § 15, p. 1192.

**59-1516 Revocation of license; procedure; appeal.**

(1) In addition to sections 59-1503 and 59-1515, the division may, after notice and hearing, suspend or revoke for any violation of the Unfair Cigarette Sales Act the license or licenses of any person, licensed under the provisions of Chapter 28 or Chapter 77, article 26, and notice of hearing shall be given as provided in the Administrative Procedure Act.

(2) Any person whose license or licenses have been so revoked may apply to the division at the expiration of sixty days for a reinstatement of his or her license or licenses. Such license or licenses may be reinstated by the division if it shall appear to the satisfaction of the division that the licensee will comply with the Unfair Cigarette Sales Act and the rules and regulations adopted and promulgated under the act.

(3) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or her or upon other premises controlled by him or her or others or in any other manner or form whatever. No disciplinary proceedings or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of Chapter 28 or Chapter 77, article 26.

(4) Any person aggrieved by any decision, order, or finding of the division may appeal the decision, order, or finding, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1965, c. 364, § 16, p. 1192; Laws 1988, LB 352, § 102.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**Cigarette tax**, see Chapter 77, article 26.

**Licensing provisions**, see sections 28-1420 to 28-1429.02.

**59-1517 Cigarette tax division; enforcement of sections.**

In order to effectuate the purposes of sections 59-1501 to 59-1518 it shall be the duty of the division to carry out the enforcement provisions of sections 59-1501 to 59-1518. In accordance with the laws of this state the division may, within the limits of available appropriations, employ and fix the duties and compensation of such inspectors and other personnel necessary to carry out the provisions of sections 59-1501 to 59-1518.

**Source:** Laws 1965, c. 364, § 17, p. 1193.

**59-1518 Cigarette tax division; powers vested by other laws.**

All of the powers vested in the division by the provisions of any law heretofore or hereafter to be enacted, shall be available to the division in the enforcement of the Unfair Cigarette Sales Act.

**Source:** Laws 1965, c. 364, § 18, p. 1193.

## (b) GREY MARKET SALES

**59-1519 Terms, defined.**

For purposes of sections 59-1519 to 59-1525:

- (1) Cigarettes has the same meaning as in section 77-2601;
- (2) Package has the same meaning as in 15 U.S.C. 1332(4), as such section existed on May 1, 2001; and
- (3) Person has the same meaning as in section 77-2601.

**Source:** Laws 2001, LB 358, § 1.

**59-1520 Prohibited acts.**

It is unlawful for any person to:

(1) Sell or distribute in this state, acquire, hold, own, possess, or transport for sale or distribution in this state, or import or cause to be imported into this state for sale or distribution in this state, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and regulations, including, but not limited to:

(a) The filing of ingredients lists pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a, as such section existed on January 1, 2011;

(b) The permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on January 1, 2011;

(c) The rotation of label statements pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333(c), as such section existed on January 1, 2011;

(d) The restrictions on the importation, transfer, and sale of previously exported tobacco products pursuant to 19 U.S.C. 1681 et seq. and Chapter 52 of the Internal Revenue Code, 26 U.S.C. 5701 et seq., as such sections existed on January 1, 2011; and

(e) The federal trademark and copyright laws;

(2) Alter a package of cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(a) Any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(b) Any health warning that is not the precise package warning statement in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on January 1, 2011;

(3) Affix any stamps or meter impression required pursuant to sections 77-2601 to 77-2615 to the package of any cigarettes that does not comply with the requirements of subdivision (1) of this section or that is altered in violation of subdivision (2) of this section; and

(4) Import or reimport into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly



similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States.

**Source:** Laws 2001, LB 358, § 2; Laws 2011, LB590, § 1.

**59-1521 Exemptions.**

Sections 59-1519 to 59-1525 shall not apply to cigarettes allowed to be imported or brought into the United States for personal use or cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b), as such section existed on May 1, 2001.

**Source:** Laws 2001, LB 358, § 3.

**59-1522 Violation; penalty.**

Any person that commits any of the acts prohibited by section 59-1520, either knowing or having reason to know he or she is doing so, is guilty of a Class IV felony.

**Source:** Laws 2001, LB 358, § 4.

**59-1523 Disciplinary actions; contraband.**

(1) The cigarette tax division of the Tax Commissioner may, after notice and hearing, revoke or suspend for any violation of section 59-1520 the license or licenses of any person licensed under sections 28-1418 to 28-1429.03 or sections 77-2601 to 77-2622.

(2) Cigarettes that are acquired, held, owned, possessed, transported, sold, or distributed in or imported into this state in violation of section 59-1520 are declared to be contraband goods and are subject to seizure and forfeiture. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be declared to be contraband goods whether the violation of section 59-1520 is knowing or otherwise.

**Source:** Laws 2001, LB 358, § 5; Laws 2011, LB590, § 2; Laws 2014, LB863, § 27.

**59-1524 Deceptive trade practice.**

A violation of section 59-1520 shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act and, in addition to any remedies or penalties set forth in sections 59-1519 to 59-1525, shall be subject to any remedies or penalties available for a violation under the Uniform Deceptive Trade Practices Act.

**Source:** Laws 2001, LB 358, § 6.

**Cross References**

Uniform Deceptive Trade Practices Act, see section 87-306.

**59-1525 Enforcement.**

(1) Sections 59-1519 to 59-1525 shall be enforced by the cigarette tax division of the Tax Commissioner, except that at the request of the division or the division's duly authorized agent, the Nebraska State Patrol and any peace officer shall enforce the provisions of sections 59-1519 to 59-1525. The Attorney

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General has concurrent power with the county attorney or other prosecuting attorney of the state to enforce sections 59-1519 to 59-1525.

(2) For the purpose of enforcing sections 59-1519 to 59-1525, the division and any agency delegated enforcement responsibility pursuant to subsection (1) of this section may request information from any state or local agency and may share information with, and request information from, any federal agency and any other state or local agency.

**Source:** Laws 2001, LB 358, § 7.

**ARTICLE 16**  
**CONSUMER PROTECTION ACT**

Section	
59-1601.	Terms, defined.
59-1602.	Unfair competition; practices; unlawful.
59-1603.	Contracts, combinations, conspiracies in restraint of trade; unlawful.
59-1604.	Monopolies and attempted monopolies; unlawful.
59-1605.	Transactions and agreements not to use or deal in commodities or services of competitor; unlawful; when.
59-1606.	Acquisition of corporate stock by another corporation to lessen competition; unlawful; exceptions; judicial order to divest.
59-1607.	Labor not an article of commerce.
59-1608.	Attorney General; restrain prohibited acts; costs; restoration of property.
59-1608.01.	Enforcement of act; venue.
59-1608.02.	Repealed. Laws 2006, LB 1061, § 29.
59-1608.03.	Recovery under act; Attorney General; duties.
59-1608.04.	State Settlement Cash Fund; created; use; investment; transfer.
59-1608.05.	State Settlement Trust Fund; created; use; investment.
59-1609.	Civil action for damages.
59-1609.01.	Illegal overcharge or undercharge; damages; proof; court; powers.
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59-1612.	Limitation of action.
59-1613.	Final judgment or decree; prima facie evidence in civil action; exception.
59-1614.	Civil penalties; Attorney General; duties.
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59-1619.	Agricultural associations; monopolies; restraint of trade; Attorney General; complaint; notice of hearing.
59-1620.	Contracts and agreements in restraint of trade; void; voidable.
59-1621.	Conspiracy in restraint of trade; findings; prima facie evidence.
59-1622.	Officers; liable for debts and obligations; when.
59-1623.	Act, how cited.

**59-1601 Terms, defined.**

For purposes of the Consumer Protection Act, unless the context otherwise requires:

(1) Person shall mean natural persons, corporations, trusts, unincorporated associations, partnerships, and limited liability companies;

(2) Trade and commerce shall mean the sale of assets or services and any commerce directly or indirectly affecting the people of the State of Nebraska; and

(3) Assets shall mean any property, tangible or intangible, real, personal, or mixed, and wherever situated, and any other thing of value.

**Source:** Laws 1974, LB 1028, § 8; Laws 1993, LB 121, § 378.

The Consumer Protection Act is equitable in nature. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

**59-1602 Unfair competition; practices; unlawful.**

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful.

**Source:** Laws 1974, LB 1028, § 9.

Immunity under the Noerr-Pennington doctrine may be raised as an affirmative defense against claims for violations of this section and section 59-1603 brought under section 59-1609. Salem Grain Co. v. Consolidated Grain & Barge Co., 297 Neb. 682, 900 N.W.2d 909 (2017).

It was a violation of the Consumer Protection Act when consumers were led to believe they would receive a free freezer or another appliance by entering into a contract for food. State

ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

To be actionable under the Nebraska Consumer Protection Act, the unfair or deceptive act or practice must have an impact upon the public interest. Nelson v. Lusterstone Surfacing Co., 258 Neb. 678, 605 N.W.2d 136 (2000).

Attorney General may bring an action to recover a civil penalty for a violation of this section. State ex rel. Stenberg v. American Midlands, 244 Neb. 887, 509 N.W.2d 633 (1994).

**59-1603 Contracts, combinations, conspiracies in restraint of trade; unlawful.**

Any contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce shall be unlawful.

**Source:** Laws 1974, LB 1028, § 10.

Immunity under the Noerr-Pennington doctrine may be raised as an affirmative defense against claims for violations of this section and section 59-1602 brought under section 59-1609. Salem Grain Co. v. Consolidated Grain & Barge Co., 297 Neb. 682, 900 N.W.2d 909 (2017).

A conspiracy need not be established by direct evidence of the acts charged, but may, and generally must, be proved by a

number of indefinite acts, conditions, and circumstances which vary according to the purposes to be accomplished. State ex rel. Douglas v. Associated Grocers, 214 Neb. 79, 332 N.W.2d 690 (1983).

**59-1604 Monopolies and attempted monopolies; unlawful.**

It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce.

**Source:** Laws 1974, LB 1028, § 11.

As related to a course of action for any person injured in violation of this section, section 59-1609 contemplates an action by indirect purchasers. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

This section allows any person who is injured by a violation of sections 59-1602 to 59-1606 which directly or indirectly affects

the people of Nebraska to bring a civil action to recover damages. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

**59-1605 Transactions and agreements not to use or deal in commodities or services of competitor; unlawful; when.**

It shall be unlawful for any person to lease or sell or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor of the lessor or seller,

when the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

**Source:** Laws 1974, LB 1028, § 12.

**59-1606 Acquisition of corporate stock by another corporation to lessen competition; unlawful; exceptions; judicial order to divest.**

(1) It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation when the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(2) This section shall not apply to corporations which purchase such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition; nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

(3) In addition to any other remedy provided by the Consumer Protection Act, the district court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by such order.

**Source:** Laws 1974, LB 1028, § 13; Laws 2002, LB 1278, § 21.

**59-1607 Labor not an article of commerce.**

The labor of a human being shall not be a commodity or article of commerce. Nothing contained in the Consumer Protection Act shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.

**Source:** Laws 1974, LB 1028, § 14; Laws 2002, LB 1278, § 22.

**59-1608 Attorney General; restrain prohibited acts; costs; restoration of property.**

(1) The Attorney General may bring an action in the name of the state against any person to restrain and prevent the doing of any act prohibited by the Consumer Protection Act. The prevailing party may, in the discretion of the court, recover the costs of such action including a reasonable attorney's fee.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any act prohibited in the Consumer Protection Act.

**Source:** Laws 1974, LB 1028, § 15; Laws 2002, LB 1278, § 23.

Ticket seller was not a "prevailing party," as would support award of attorney fees under Nebraska's Consumer Protection Act and Uniform Deceptive Trade Practices Act following dismissal of the State's consumer protection suit where the State chose to voluntarily dismiss its claims before any judicial deter-

mination could be made as to their merits. State ex rel. Peterson v. Creative Comm. Promotions, 302 Neb. 606, 924 N.W.2d 664 (2019).

Restoration of the purchase price under the Nebraska Consumer Protection Act rests within the discretion of the trial court; its ruling will not be disturbed on appeal in the absence of an abuse of that discretion. State ex rel. Douglas v. Schroeder, 222 Neb. 473, 384 N.W.2d 626 (1986).

The awarding and amount of an attorney fee under the Nebraska Consumer Protection Act rest in the sound discretion of the trial court; the Nebraska Supreme Court will only interfere where the allowance is clearly excessive or insufficient. State ex rel. Douglas v. Schroeder, 222 Neb. 473, 384 N.W.2d 626 (1986).

The Nebraska Consumer Protection Act is equitable in nature; as such, trials thereunder are to the court. State ex rel. Douglas v. Schroeder, 222 Neb. 473, 384 N.W.2d 626 (1986).

### **59-1608.01 Enforcement of act; venue.**

In the enforcement of the Consumer Protection Act, the Attorney General may bring an action in the name of the state in the district court of the county in which the alleged violator resides or has his or her principal place of business or in Lancaster County.

**Source:** Laws 1983, LB 32, § 6; Laws 2002, LB 1278, § 24.

### **59-1608.02 Repealed. Laws 2006, LB 1061, § 29.**

### **59-1608.03 Recovery under act; Attorney General; duties.**

When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under the Consumer Protection Act, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment, except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under the act shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended;

(2) When the Attorney General makes recovery pursuant to the act on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended;

(3) Except as otherwise provided by law, the State Settlement Cash Fund shall consist of all recoveries received pursuant to the act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments; and

(4) Except as otherwise provided by law, the State Settlement Trust Fund shall consist of all recoveries received pursuant to the act, including any money, funds, securities, or other things of value in the nature of civil damages

or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General, but to include only those funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments.

**Source:** Laws 2006, LB 1061, § 3.

**59-1608.04 State Settlement Cash Fund; created; use; investment; transfer.**

(1) The State Settlement Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. The fund may be expended for any allowable legal purposes as determined by the Attorney General. Transfers from the State Settlement Cash Fund may be made at the direction of the Legislature to the Nebraska Capital Construction Fund, the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund, and the General Fund. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the State Settlement Cash Fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, sub-funds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall transfer two million five hundred thousand dollars from the State Settlement Cash Fund to the Nebraska Capital Construction Fund on July 1, 2013, or as soon thereafter as administratively possible.

(3) The State Treasurer shall transfer eight hundred seventy-six thousand nine hundred ninety-eight dollars from the State Settlement Cash Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(4) The State Treasurer shall transfer one million seven hundred fifty-six thousand six hundred thirty-nine dollars from the State Settlement Cash Fund to the General Fund on or before June 30, 2019, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(5) The State Treasurer shall transfer one hundred twenty-five thousand dollars from the State Settlement Cash Fund to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund on or before April

30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(6) The State Treasurer shall transfer one hundred fifty thousand dollars from the State Settlement Cash Fund to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund on or before July 9, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2006, LB 1061, § 4; Laws 2009, First Spec. Sess., LB3, § 34; Laws 2010, LB190, § 7; Laws 2011, LB549, § 8; Laws 2013, LB199, § 26; Laws 2017, LB331, § 26; Laws 2018, LB945, § 14.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**59-1608.05 State Settlement Trust Fund; created; use; investment.**

The State Settlement Trust Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General, but to include only those funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. All money in the State Settlement Trust Fund shall be subject to legislative review, but shall not be subject to legislative appropriation. The fund shall be expended consistent with any legal restrictions placed on the funds. The fund shall be paid from the same budget program used to record revenue and expenditures of the State Settlement Cash Fund, except that the fund shall only be expended from a separate and distinct budget subprogram and shall not be commingled with any other revenue or expenditure. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2006, LB 1061, § 5.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**59-1609 Civil action for damages.**

Any person who is injured in his or her business or property by a violation of sections 59-1602 to 59-1606, whether such injured person dealt directly or indirectly with the defendant, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of sections 59-1603 to 59-1606, may bring a civil action in the district court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount which bears a reasonable relation to the actual damages which have been sustained and which damages are not susceptible of measurement by ordinary pecuniary standards; except that such increased award for violation of section 59-1602 shall not exceed one thousand dollars. For the purpose of this section, person shall include the counties, the municipalities, and all political subdivisions of this state.

Whenever the State of Nebraska is injured by reason of a violation of sections 59-1603 to 59-1606, it may sue therefor in the district court to recover the actual damages sustained by it and to recover the costs of the suit including a reasonable attorney's fee.

**Source:** Laws 1974, LB 1028, § 16; Laws 2002, LB 1278, § 26.

Immunity under the Noerr-Pennington doctrine may be raised as an affirmative defense against claims for violations of sections 59-1602 and 59-1603 brought under this section. *Salem Grain Co. v. Consolidated Grain & Barge Co.*, 297 Neb. 682, 900 N.W.2d 909 (2017).

As related to a cause of action for any person injured in violation of section 59-1604, this section contemplates an action by indirect purchasers. *Arthur v. Microsoft Corp.*, 267 Neb. 586, 676 N.W.2d 29 (2004).

**59-1609.01 Illegal overcharge or undercharge; damages; proof; court; powers.**

In an illegal overcharge or undercharge case in which claims are asserted by both parties who dealt directly with the defendant and parties who dealt indirectly with the defendant or any combination thereof:

(1) A defendant may prove, as a partial or complete defense to a claim for damages under sections 59-1602 to 59-1606, that the illegal overcharge or undercharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of such damages; and

(2) The court may transfer and consolidate such claims, apportion damages, and delay disbursement of damages to avoid multiplicity of suits and duplication of recovery of damages and to obtain substantial fairness.

**Source:** Laws 2002, LB 1278, § 27.

**59-1610 Assurance of discontinuance of prohibited act; approval of court; not considered admission.**

In the enforcement of the Consumer Protection Act, the Attorney General may accept an assurance of discontinuance of any act or practice deemed in violation of the Consumer Protection Act, from any person who engages in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his or her principal place of business, or in Lancaster County.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose, but proof of failure to comply with the assurance of



discontinuance shall be prima facie evidence of a violation of the Consumer Protection Act.

**Source:** Laws 1974, LB 1028, § 17; Laws 2002, LB 1278, § 28.

**59-1611 Demand to produce documentary materials for inspection; contents; service; unauthorized disclosure; return; modification; vacation; use; penalty.**

(1) Whenever the Attorney General believes that any person may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of sections 59-1602 to 59-1606, the Attorney General may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying thereof. This section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material shall be produced; and

(d) Identify the members of the Attorney General's staff to whom such documentary material shall be made available for inspection and copying.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if such person has no place of business in this state, to his or her principal office or place of business.

(5) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the Attorney General.

(6) No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a district court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the Attorney General, without the consent of the person who produced such material, except that:

(a) Under such reasonable terms and conditions as the Attorney General shall prescribe, the copies of such documentary material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person;

(b) The Attorney General may provide copies of such documentary material to an official of this or any other state, or an official of the federal government, who is charged with the enforcement of federal or state antitrust or consumer protection laws, if such official agrees in writing to not disclose such documentary material to any person other than the official's authorized employees, except as such disclosure is permitted under subdivision (c) of this subsection; and

(c) The Attorney General or any assistant attorney general or an official authorized to receive copies of documentary material under subdivision (b) of this subsection may use such copies of documentary material as he or she determines necessary in the enforcement of the Consumer Protection Act or any state or federal consumer protection laws that any state or federal official has authority to enforce, including presentation before any court, except that any such material which contains trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the district court for Lancaster County, or in such other county where the parties reside. A petition by the person on whom the demand is served, stating good cause, to require the Attorney General or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the district court for Lancaster County or in the county where the parties reside.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his or her principal place of business or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the district court of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order as may be required to carry into effect the

provisions of this section. Disobedience of any order entered under this section by any court shall be punished as a contempt thereof.

**Source:** Laws 1974, LB 1028, § 18; Laws 2002, LB 1278, § 29; Laws 2016, LB835, § 22.

**59-1612 Limitation of action.**

Any action to enforce a claim for damages under section 59-1609 shall be forever barred unless commenced within four years after the cause of action accrues; *Provided*, that whenever any action is brought by the Attorney General for a violation of sections 59-1602 to 59-1606, except actions for the recovery of a civil penalty for violation of an injunction or actions under section 59-1609, the running of such statute of limitations, with respect to every private right of action for damages under section 59-1609 which is based in whole or part on any matter complained of in the action by the Attorney General, shall be suspended during the pendency thereof.

**Source:** Laws 1974, LB 1028, § 19.

**59-1613 Final judgment or decree; prima facie evidence in civil action; exception.**

A final judgment or decree rendered in any action brought under section 59-1608 by the state to the effect that a defendant has violated sections 59-1602 to 59-1606 shall be prima facie evidence against such defendant in any action brought by any party against such defendant under section 59-1609 as to all matters as to which such judgment or decree would be an estoppel as between the parties thereto; *Provided*, that this section shall not apply to consent judgments or decrees when the court makes no finding of illegality.

**Source:** Laws 1974, LB 1028, § 20.

**59-1614 Civil penalties; Attorney General; duties.**

Any person who violates section 59-1603 or 59-1604 or the terms of any injunction issued as provided in the Consumer Protection Act shall forfeit and pay a civil penalty of not more than five hundred thousand dollars.

Any person who violates section 59-1602 shall pay a civil penalty of not more than two thousand dollars for each violation, except that such penalty shall not apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium who publishes, prints, or distributes advertising in good faith without knowledge of its false, deceptive, or misleading character and no such good faith publication, printing, or distribution shall be considered a violation of section 59-1602.

For the purpose of this section, the district court which issues any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of sections 59-1603 and 59-1604, the Attorney General, acting in the name of the state, may seek recovery of such penalties in a civil action.

**Source:** Laws 1974, LB 1028, § 21; Laws 1980, LB 186, § 1; Laws 2002, LB 1278, § 30; Laws 2016, LB835, § 23.

**59-1615 Dissolution, suspension, or forfeiture of corporate franchise.**

Upon petition by the Attorney General, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation which violates section 59-1603 or 59-1604 or the terms of any injunction issued as provided in the Consumer Protection Act.

**Source:** Laws 1974, LB 1028, § 22; Laws 2002, LB 1278, § 31.

**59-1616 Personal service of process outside state.**

Personal service of any process in an action under the Consumer Protection Act may be made upon any person outside the state if such person has engaged in conduct in violation of the act which has had impact in this state which the act prohibits.

**Source:** Laws 1974, LB 1028, § 23; Laws 2002, LB 1278, § 32.

**59-1617 Exempted transactions; applicability of provisions.**

(1) Except as provided in subsection (2) of this section, the Consumer Protection Act shall not apply to actions or transactions otherwise permitted, prohibited, or regulated under laws administered by the Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or any other regulatory body or officer acting under statutory authority of this state or the United States. The Consumer Protection Act and federal antitrust laws shall not extend to or apply to (a) any actions or transactions on the part of any municipality or group of municipalities while engaged in regulating natural gas rates pursuant to the State Natural Gas Regulation Act or section 16-679 or 17-528.02 or as otherwise permitted by law or (b) any actions or transactions on the part of any public power and irrigation district, public power district, electric membership association, or joint authority created pursuant to the Joint Public Power Authority Act or of any agency created pursuant to the Municipal Cooperative Financing Act, cooperative, or municipality engaged in furnishing electrical service to customers at retail or wholesale if such actions or transactions are otherwise permitted by law.

(2) Actions and transactions prohibited or regulated under the laws administered by the Director of Insurance shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of section 59-1602. Actions and transactions prohibited or regulated under the laws administered by the Board of Funeral Directing and Embalming or administered by the Department of Agriculture and actions and transactions relating to loan brokers which are prohibited or regulated pursuant to sections 45-189 to 45-191.11 and administered by the Department of Banking and Finance shall be subject to the Consumer Protection Act.

No penalty or remedy shall result from a violation of the Consumer Protection Act except as expressly provided in such act.

**Source:** Laws 1974, LB 1028, § 24; Laws 1980, LB 94, § 18; Laws 1981, LB 487, § 46; Laws 1982, LB 751, § 2; Laws 1985, LB 193, § 1; Laws 1987, LB 663, § 24; Laws 1993, LB 270, § 14; Laws 1993, LB 187, § 2; Laws 1999, LB 828, § 6; Laws 2003, LB 790, § 59.

**Cross References**

**Joint Public Power Authority Act**, see section 70-1401.

**Municipal Cooperative Financing Act**, see section 18-2401.

**State Natural Gas Regulation Act**, see section 66-1801.

The issuance of a certificate of deposit was exempted from the purview of the Consumer Protection Act under subsection (1) of this section because the bank was heavily regulated and the certificate of deposit form was indirectly approved by the Director of Banking and Finance, whose charge was to constructively aid banks in maintaining proper banking standards and efficiency. *Wrede v. Exchange Bank of Gibbon*, 247 Neb. 907, 531 N.W.2d 523 (1995).

Generally, institutions that are governed by the Nebraska Department of Banking and Finance or the Nebraska State Real Estate Commission are exempt from the provisions of the Consumer Protection Act. *Little v. Gillette*, 218 Neb. 271, 354 N.W.2d 147 (1984).

Under the provisions of this statute, where the Banking Act requires the director of the Department of Banking and Finance

to “constructively aid banks in maintaining proper banking standards and efficiency”, a bank is exempt from the Consumer Protection Act by reason of its failure to follow customary and standard banking practices. *Hydroflo Corp. v. First Nat. Bank of Omaha*, 217 Neb. 20, 349 N.W.2d 615 (1984).

Under the provisions of this section, an installment loan by an industrial loan and investment company, regulated by the Nebraska Department of Banking and Finance, is exempt from the Consumer Protection Act, sections 59-1601 et seq. *McCaul v. American Savings Co.*, 213 Neb. 841, 331 N.W.2d 795 (1983).

Nebraska Consumer Protection Act, sections 59-1601 to 59-1623, does not apply to an installment loan made by a licensee under the installment loan act, sections 45-114 to 45-158. *Kuntzelman v. Avco Financial Services of Nebraska, Inc.*, 206 Neb. 130, 291 N.W.2d 705 (1980).

### **59-1618 Agricultural products; producers; associations; form; requirements.**

Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut growers, or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing such products in intrastate commerce. Such associations may have marketing agencies in common, and the associations and their members may make the necessary contracts and agreements to effect such purposes. The associations shall be operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

- (1) That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or
- (2) That the association does not pay dividends on stock or membership capital in excess of eight percent per annum.

Such association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

**Source:** Laws 1974, LB 1028, § 25.

### **59-1619 Agricultural associations; monopolies; restraint of trade; Attorney General; complaint; notice of hearing.**

If the Attorney General shall have reason to believe that any association described in section 59-1618 monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached or in which shall be contained a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

**Source:** Laws 1974, LB 1028, § 26.

### **59-1620 Contracts and agreements in restraint of trade; void; voidable.**

All contracts and agreements made in restraint of trade by coconspirators in violation of the provisions of section 59-1603, 59-1604, or 59-1605 shall be void. All contracts and agreements made between a conspirator and an inno-

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cent party in violation of the provisions of section 59-1603, 59-1604, or 59-1605 shall be voidable by the innocent party.

**Source:** Laws 1974, LB 1028, § 27.

**59-1621 Conspiracy in restraint of trade; findings; prima facie evidence.**

Upon a finding in district court that a conspiracy in restraint of trade existed in an action brought pursuant to section 59-1603 or 59-1604, that finding shall constitute prima facie evidence of the existence of the conspiracy in subsequent civil actions involving the conspiracy.

**Source:** Laws 1974, LB 1028, § 28.

**59-1622 Officers; liable for debts and obligations; when.**

Every president, treasurer, general manager, agent, or other person exercising the powers of such office of any corporation, joint-stock company, or other association, who has himself, in its behalf, knowingly violated, united to violate, or consented to the violation of the provisions of section 59-1603, 59-1604, or 59-1605, shall thereafter be personally liable for all debts and obligations of any such corporation, joint-stock company, or other association created while such person holds such office or agency and which were incurred in the furtherance of that violation.

**Source:** Laws 1974, LB 1028, § 29.

**59-1623 Act, how cited.**

Sections 59-1601 to 59-1622 shall be known and may be cited as the Consumer Protection Act.

**Source:** Laws 1974, LB 1028, § 30; Laws 2002, LB 1278, § 33; Laws 2006, LB 1061, § 2.

**ARTICLE 17**

**SELLER-ASSISTED MARKETING PLAN**

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## SELLER-ASSISTED MARKETING PLAN

- Section
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**59-1701 Legislative intent and findings; seller-assisted marketing plans.**

(1) The Legislature finds and declares that the widespread sale of seller-assisted marketing plans, often connected with the sale of vending machines, vending racks, or work-at-home paraphernalia, has created numerous problems in Nebraska for purchasers which are inimical to good business practice. Often purchasers of seller-assisted marketing plans are individuals inexperienced in business matters who use their life savings to purchase the seller-assisted marketing plan in the hope that they will earn enough money in addition to retirement income or salary to become or remain self-sufficient. Many purchasers are the elderly who are seeking a way to supplement their fixed incomes. The initial payment is usually in the form of a purchase of overpriced equipment or products. Nebraska purchasers have suffered substantial losses when they have failed to receive full and complete information regarding the seller-assisted marketing plan, the amount of money they can reasonably expect to earn, and the previous experience of the seller-assisted marketing plan seller. Seller-assisted marketing plan sellers have a significant impact upon the economy and well-being of this state and its local communities. The provisions of the Seller-Assisted Marketing Plan Act relating to seller-assisted marketing plans are necessary for the public welfare.

(2) It is the intent of the act to provide each prospective seller-assisted marketing plan purchaser with the information necessary to make an intelligent decision regarding seller-assisted marketing plans being offered, to safeguard the public against deceit and financial hardship, to insure, foster, and encourage competition and fair dealing in the sale of seller-assisted marketing plans by requiring adequate disclosure, to prohibit representations that tend to mislead, and to prohibit or restrict unfair contract terms. The act shall be construed liberally in order to achieve such purposes.

**Source:** Laws 1979, LB 180, § 1; Laws 1993, LB 218, § 2.

**59-1701.01 Act, how cited.**

Sections 59-1701 to 59-1762 shall be known and may be cited as the Seller-Assisted Marketing Plan Act.

**Source:** Laws 1993, LB 218, § 1; Laws 2003, LB 217, § 41.

**59-1702 Definitions; where found.**

For purposes of the Seller-Assisted Marketing Plan Act, unless the context otherwise requires, the definitions found in sections 59-1703 to 59-1714.01 shall be used.

**Source:** Laws 1979, LB 180, § 2; Laws 1993, LB 218, § 3.

**59-1703 Seller-assisted marketing plan, defined.**

Seller-assisted marketing plan shall mean the sale or lease or offer for sale or lease of any product, equipment, supplies, services, license, or any combination thereof which will be used by or on behalf of the purchaser to begin or maintain a business when:

(1) The seller of the plan has advertised or in other manner solicited the purchase or lease of the plan; and



(2) The seller has represented directly or indirectly or orally or in writing that:

(a) The seller or a person recommended or specified by the seller will provide the purchaser with or assist the purchaser in finding locations for the use or operation of vending machines, vending routes, display racks, display cases, or other similar devices on premises neither owned nor leased by the seller or the purchaser;

(b) The seller or a person recommended or specified by the seller will provide the purchaser with or will assist the purchaser in finding outlets or accounts for the purchaser's products or services;

(c) The seller or a person specified by the seller will or is likely to purchase any or all of the products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the product, supplies, equipment, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;

(d) The purchaser will, is likely to, or can derive income from the business which exceeds the initial payment paid by the purchaser for participation in the plan;

(e) There is a market for the product, equipment, supplies, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;

(f) The seller will refund all or part of the initial payment paid to the seller or will repurchase any of the products, equipment, or supplies provided by the seller or a person recommended or specified by the seller, if the purchaser is dissatisfied with the business; or

(g) The seller or a person recommended or specified by the seller will provide advice or training pertaining to the sale of any products, equipment, supplies, or services or use of any licensed material and the advice or training includes, but is not limited to, preparing or providing (i) promotional literature, brochures, pamphlets, or advertising materials, (ii) training regarding the promotion, operation, or management of the seller-assisted marketing plan, or (iii) operational, managerial, technical, or financial guidelines or assistance.

**Source:** Laws 1979, LB 180, § 3; Laws 1993, LB 218, § 4; Laws 1995, LB 599, § 16; Laws 2003, LB 217, § 42.

**59-1704 Person, defined.**

Person shall mean any individual, corporation, partnership, limited liability company, joint venture, or business entity.

**Source:** Laws 1979, LB 180, § 4; Laws 1993, LB 121, § 379.

**59-1705 Seller, defined.**

Seller shall mean a person who sells or leases or offers to sell or lease a seller-assisted marketing plan and:

(1) Has sold, leased, represents, or implies that the seller has sold or leased, whether in Nebraska or elsewhere, at least five seller-assisted marketing plans within twenty-four months prior to a solicitation; or

(2) Intends, represents, or implies that the seller intends to sell or lease, whether in Nebraska or elsewhere, at least five seller-assisted marketing plans

within twelve months following a solicitation. If the seller intends to sell four or less seller-assisted marketing plans within the time period stated in this subdivision, the seller, in order to be excluded from the provisions of the Seller-Assisted Marketing Plan Act, shall notify each purchaser in writing at the time of sale of its intention to sell only four or less seller-assisted marketing plans.

**Source:** Laws 1979, LB 180, § 5; Laws 1983, LB 461, § 1; Laws 1993, LB 218, § 5.

**59-1706 Purchaser, defined.**

Purchaser shall mean a person who is solicited to become obligated or does become obligated on a seller-assisted marketing plan contract.

**Source:** Laws 1979, LB 180, § 6.

**59-1707 Equipment, defined.**

Equipment shall mean machines, all electrical devices, video or audio devices, molds, display racks, vending machines, coin-operated game machines, machines which dispense products, and display units of all kinds.

**Source:** Laws 1979, LB 180, § 7.

**59-1708 Supplies, defined.**

Supplies shall mean any and all materials used to produce, grow, breed, or make any product or item.

**Source:** Laws 1979, LB 180, § 8.

**59-1709 Product, defined.**

Product shall mean any tangible chattel, including food or living animals, which the purchaser intends to:

- (1) Sell or lease to the general public;
- (2) Use to perform a service for the general public;
- (3) Resell or attempt to resell to the seller of the seller-assisted marketing plan; or
- (4) Provide or attempt to provide to the seller of the seller-assisted marketing plan so that such seller might resell the product to the general public.

**Source:** Laws 1979, LB 180, § 9.

**59-1710 Services, defined.**

Services shall mean any assistance, guidance, direction, work, labor, or services provided by the seller to initiate or maintain the seller-assisted marketing plan.

**Source:** Laws 1979, LB 180, § 10.

**59-1711 Seller-assisted marketing plan contract or contract, defined.**

Seller-assisted marketing plan contract or contract shall mean any contract or agreement which obligates a purchaser to a seller.

**Source:** Laws 1979, LB 180, § 11.

**59-1712 Initial payment, defined.**

Initial payment shall mean the total amount a purchaser is obligated to pay under the terms of the seller-assisted marketing plan contract prior to or at the time of delivery of the equipment, supplies, products, or services or within six months of the purchaser commencing operation of the seller-assisted marketing plan. If the contract sets forth a specific total sale price for purchase of the seller-assisted marketing plan which total price is to be paid partially as a downpayment and then in specific monthly payments, the initial payment shall mean the entire total sale price.

**Source:** Laws 1979, LB 180, § 12.

**59-1713 Buy-back or secured investment, defined.**

Buy-back or secured investment shall mean any representation which implies in any manner that the purchaser's initial payment is protected from loss.

**Source:** Laws 1979, LB 180, § 13.

**59-1714 Ongoing business, defined.**

Ongoing business shall mean one which for at least six months previous to the sale:

- (1) Has been operated from a specific given location;
- (2) Has been open for business to the general public; and
- (3) Has had all equipment and supplies necessary for operating the business located at the specific given location.

**Source:** Laws 1979, LB 180, § 14.

**59-1714.01 License, defined.**

License shall mean the right or permission to use (1) material or personal property, including computer programs, protected under the copyright or patent laws of the United States or any foreign government and (2) a trademark, service mark, or trade name registered under Nebraska law or the law of any other state, of the United States, or of any foreign government.

**Source:** Laws 1993, LB 218, § 7.

**59-1715 Seller-assisted marketing plan; securities excluded.**

A seller-assisted marketing plan shall not include a security as defined by subdivision (15) of section 8-1101.

**Source:** Laws 1979, LB 180, § 15; Laws 1993, LB 216, § 12; Laws 1997, LB 335, § 13.

**59-1716 Seller-assisted marketing plan; real estate or insurance transactions; excluded.**

A seller-assisted marketing plan shall not include any transaction for which either the seller, purchaser, lessor, or lessee is licensed pursuant to and the transaction is governed by the State Real Estate Commission or the Department of Insurance.

**Source:** Laws 1979, LB 180, § 16.

**59-1717 Seller-assisted marketing plan; sales under certain license; excluded.**

A seller-assisted marketing plan shall not include a license granted by a general merchandise retailer which allows the licensee to sell goods, equipment, supplies, products, or services to the general public under the retailer's trademark, trade name, or service mark when the general merchandise retailer has been doing business continuously for five years prior to the granting of the license.

**Source:** Laws 1979, LB 180, § 17.

**59-1718 Seller-assisted marketing plan; sale or lease to ongoing business enterprises; excluded.**

A seller-assisted marketing plan shall not include a sale or lease to an ongoing business enterprise which also sells or leases equipment, products, or supplies or performs services which are not supplied by the seller and which the purchaser does not utilize with the equipment, products, supplies, or services of the seller.

**Source:** Laws 1979, LB 180, § 18; Laws 1993, LB 218, § 6.

**59-1718.01 Seller-assisted marketing plan; sales under five hundred dollars; exemption from act; conditions.**

A seller-assisted marketing plan shall not include the sale of a business opportunity for which the immediate cash payment made by the purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples for use in making sales and not for resale or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

**Source:** Laws 1993, LB 218, § 8.

**59-1719 Seller-assisted marketing plan; sale of an ongoing business; excluded.**

A seller-assisted marketing plan shall not include the sale of an ongoing business.

**Source:** Laws 1979, LB 180, § 19.

**59-1720 Seller-assisted marketing plan; certain sale, lease, or offer; excluded.**

A seller-assisted marketing plan shall not include a sale, lease, or offer to sell or lease to a purchaser: (1) Who has for a period of at least six months previously bought products, supplies, services, or equipment which were sold under the same trademark or trade name or which were produced by the seller; and (2) who has received on resale of such product, supplies, services, or equipment an amount which is at least equal to the amount of the initial payment.

**Source:** Laws 1979, LB 180, § 20.

**59-1721 Seller-assisted marketing plan; renewal or extension of existing plan; excluded.**

A seller-assisted marketing plan shall not include the renewal or extension of an existing seller-assisted marketing plan contract.

**Source:** Laws 1979, LB 180, § 21.

**59-1722 Transaction involving the sale of a franchise; exempt; exception; conditions; fee.**

(1) Any transaction involving the sale of a franchise as defined in 16 C.F.R. 436.1(h), as such regulation existed on January 1, 2021, shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to subdivision (1)(d) of section 59-1757, those provisions regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728 and 59-1751, and all sections which provide for their enforcement. The exemption shall only apply if:

(a) The franchise is offered and sold in compliance with the requirements of 16 C.F.R. part 436, Disclosure Requirements and Prohibitions Concerning Franchising, as such part existed on January 1, 2021;

(b) Before placing any advertisement in a Nebraska-based publication, offering for sale to any prospective purchaser in Nebraska, or making any representations in connection with such offer or sale to any prospective purchaser in Nebraska, the seller files a notice with the Department of Banking and Finance which contains (i) the name, address, and telephone number of the seller and the name under which the seller intends to do business and (ii) a brief description of the plan offered by the seller; and

(c) The seller pays a filing fee of one hundred dollars.

(2) The department may request a copy of the disclosure document upon receipt of a written complaint or inquiry regarding the seller or upon a reasonable belief that a violation of the Seller-Assisted Marketing Plan Act has occurred or may occur. The seller shall provide such copy within ten business days of receipt of the request.

(3) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The Director of Banking and Finance may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities if the director finds that such an order is in the public interest or is necessary for the protection of purchasers. An order shall not be entered without appropriate prior notice to all interested parties, an opportunity for hearing, and written findings of fact and conclusions of law. If the public interest or the protection of purchasers so requires, the director may by order summarily deny or revoke an exemption specified in this section pending final determination of any proceedings under this section. An order under this section shall not operate retroactively.

**Source:** Laws 1979, LB 180, § 22; Laws 1993, LB 218, § 9; Laws 2001, LB 53, § 108; Laws 2013, LB214, § 11; Laws 2020, LB909, § 47; Laws 2021, LB363, § 29.  
Effective date March 18, 2021.

**59-1722.01 Transaction; sales under five hundred dollars; exemption from act; provisions applicable.**

Any transaction in which the purchaser makes or will become obligated to make a total initial payment of an amount not exceeding five hundred dollars shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to section 59-1751, to subdivision (1)(d) of section 59-1757, and to those provisions in the act regulating or prescribing the use of

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the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728.

**Source:** Laws 2003, LB 217, § 44.

**59-1723 Seller-assisted marketing plan; sale, lease, or offer; occurs; when.**

(1) An offer to sell or offer to lease a seller-assisted marketing plan shall occur in this state whenever:

- (a) The offer to sell or offer to lease is made in this state;
- (b) The purchaser resides in this state at the time of the offer; or
- (c) The offer to sell or offer to lease either originates from this state or is directed by the seller or lessor to this state and received at the place to which it is directed.

(2) A sale or lease of a seller-assisted marketing plan shall occur in this state whenever:

- (a) The offer to sell or offer to lease is accepted in this state;
- (b) The purchaser resides in this state at the time of the sale; or
- (c) The acceptance is communicated to a seller situated in this state.

**Source:** Laws 1979, LB 180, § 23.

**59-1724 Marketing plan; seller; disclosure document; contents; list of sellers; file; update; fees.**

(1)(a) Before placing any advertisement, making any other solicitation, making any sale, or making any representations to any prospective purchaser in Nebraska, the seller shall file with the Department of Banking and Finance a copy of a disclosure document prepared pursuant to sections 59-1733 to 59-1740 and pay a filing fee of one hundred dollars.

(b) The seller shall file an amended document with the department whenever a material change in the information occurs and shall pay a fee of fifty dollars for filing each such document.

(c) If the seller continues to solicit seller-assisted marketing plans in Nebraska, he or she shall annually file an updated disclosure document and pay a renewal fee of fifty dollars on or before the anniversary date of the initial filing for the particular seller-assisted marketing plan. In addition to the updated disclosure document, if a seller requires a purchaser to enter into a noncompete agreement in a side agreement or ancillary agreement, the seller shall include a disclosure of the existence of such side agreement or ancillary agreement in the updated disclosure document.

(d) In addition to the disclosure document, the seller shall file a list of the names and resident addresses of those individuals who sell the seller-assisted marketing plan on behalf of the seller. The list of sales representatives shall be updated through a new filing every six months. No fee shall be required to be paid for any filing which includes only an updated list of sales representatives.

(2) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

**Source:** Laws 1979, LB 180, § 24; Laws 1993, LB 218, § 10; Laws 2016, LB942, § 1.

**59-1725 Marketing plan; violations; investigations; director; powers.**

(1)(a) The Director of Banking and Finance in his or her discretion may make such investigations within or without this state as he or she deems necessary to determine whether any person has violated or is about to violate any provision of the Seller-Assisted Marketing Plan Act or any rule, regulation, or order of the director or to aid in the enforcement of the act or in the adoption or promulgation of rules, regulations, and forms under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the person who is the subject of the investigation.

(b) The director may publish information concerning any violation of the act or any rule, regulation, or order of the director.

(c) For the purpose of any investigation or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2)(a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director or the officer designated by the director to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(b) The request for order of compliance may be addressed to either (i) the district court of Lancaster County or the district court in the county where service may be obtained on the person refusing to testify or produce if the person is within this state or (ii) the appropriate district court of this state having jurisdiction over the person refusing to testify or produce if the person is outside this state.

**Source:** Laws 1979, LB 180, § 25; Laws 1983, LB 461, § 2; Laws 1993, LB 218, § 11.

**59-1725.01 Seller-assisted marketing plan; cease and desist order; fine; injunction; procedures; appeal.**

(1) The Director of Banking and Finance may summarily order a seller or any officer, director, employee, or agent of such seller to cease and desist from the further offer or sale of any seller-assisted marketing plan by the seller if the director finds:

(a) There has been a substantial failure to comply with any of the provisions of the Seller-Assisted Marketing Plan Act;

(b) The offer or sale of the plan would constitute misrepresentation to or deceit or fraud upon the purchasers; or

(c) Any person identified in the required disclosure document has been convicted of an offense described in subdivision (2)(a) of section 59-1735 or is subject to an order or has had a civil judgment entered against him or her as described in subdivision (2)(b) or (c) of section 59-1735, and the involvement of such person in the sale or management of the seller-assisted marketing plan creates an unreasonable risk to prospective purchasers.

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(2) If the director believes, whether or not based upon an investigation conducted under section 59-1725, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Seller-Assisted Marketing Plan Act or any rule, regulation, or order of the director, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine not to exceed five thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with the Seller-Assisted Marketing Plan Act or any order under the act.

(3) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4)(a) Any fines and costs imposed under this section shall be in addition to all other penalties imposed by the laws of this state. The Department of Banking and Finance 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.

(b) If a person fails to pay the administrative fine or investigation costs referred to in this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall, in writing, promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days after the issuance of the order. Upon receipt of such written request, the matter shall be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order shall automatically become final 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 and hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) 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.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1993, LB 218, § 12; Laws 2001, LB 53, § 109; Laws 2020, LB909, § 48.

**Cross References**

**Administrative Procedure Act**, see section 84-920.



**59-1726 Marketing plan; seller; use of certain phrases; prohibited.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not:

(1) Use the phrase buy-back or secured investment or similar phrase orally or in writing when soliciting, offering, leasing, or selling a seller-assisted marketing plan if the security is the value of the equipment, supplies, products, or services supplied by the seller to the purchaser; or

(2) Use the phrase buy-back or secured investment or similar phrase orally or in writing when soliciting, offering, leasing, or selling a seller-assisted marketing plan unless there are no restrictions or qualifications whatsoever preventing or limiting a purchaser from being able to invoke the buy-back or secured portion of the seller-assisted marketing plan contract at any time the purchaser desires during the one-year period following the contract date.

**Source:** Laws 1979, LB 180, § 26.

**59-1727 Marketing plan; buy-back or security investment provision; invoked; entitlement.**

Upon invocation of the buy-back or security investment provision under section 59-1726, the minimum amount a purchaser shall be entitled to have returned to him or her is the full amount of his or her initial payment, less the money actually received by him or her from the operation of the seller-assisted marketing plan. The amount actually received shall be either the amount the purchaser actually obtained from the seller for any product resold to the seller or the amount of money the general public pays for use of the purchaser's product, equipment, supplies, or services, less any amount the purchaser has paid the owner or manager of the location at which the purchaser's products, equipment, supplies, or services are placed.

**Source:** Laws 1979, LB 180, § 27.

**59-1728 Marketing plan; payment secured; buy-back arrangement; representations; prohibited; exception.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not represent that a purchaser's initial payment is secured in any manner or to any degree or that the seller provides a buy-back arrangement unless the seller has, in conformity with section 59-1751, either obtained a surety bond issued by a surety company admitted to do business in this state or established a trust account.

**Source:** Laws 1979, LB 180, § 28; Laws 1995, LB 599, § 17.

**59-1729 Marketing plan; earning potential claim; substantiated by data.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not represent that the seller-assisted marketing plan provides income or earning potential of any kind unless the seller has data to substantiate the claims of income or earning potential and discloses this data to the purchaser at the time the claim is made, if made in person, or if made through written or telephonic communication, at the first in-person communication thereafter and, when disclosed, the data is left with the purchaser. A mathematical computation of the number of sales, multiplied by the amount of profit per sale to reach a projected income figure is not sufficient

data to substantiate an income or earning potential claim. The data left by the seller must at least disclose:

- (1) The length of time the seller has been selling the particular seller-assisted marketing plan being offered;
- (2) The number and percentage such number represents of the total number of purchasers who form the basis for the income or earning potential representation; and
- (3) The number of purchasers known to the seller to have made at least the same sales, income, or profits as those represented.

**Source:** Laws 1979, LB 180, § 29.

**59-1730 Marketing plan; advertising; commercial symbol; requirements.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the seller-assisted marketing plan, unless the nature of the seller's relationship to such other business entity is set forth immediately adjacent to and in type size equal to or larger than that used to depict the commercial symbol of such other business. If a member of a trade association, the seller may use the logo or registration mark of the trade association in advertisements and materials without regard to this section.

**Source:** Laws 1979, LB 180, § 30.

**59-1731 Marketing plan; advertisement; name and address of seller; required.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not place or cause to be placed any advertisement for a seller-assisted marketing plan which does not include the actual business name of the seller, and if it differs, the name under which the seller-assisted marketing plan is operated and the street address of the principal place of business of the seller.

**Source:** Laws 1979, LB 180, § 31.

**59-1732 Seller-assisted marketing plan; potential purchaser; seller provide disclosure document.**

In the first in-person communication with a potential purchaser or in the first written response to an inquiry by a potential purchaser wherein the seller-assisted marketing plan is described, the seller shall provide the prospective purchaser a written disclosure document which contains the disclosure information required by sections 59-1733 to 59-1740. Such disclosure document shall contain a cover sheet entitled in at least sixteen-point boldface capital letters DISCLOSURE REQUIRED BY NEBRASKA LAW. Under the title shall appear, in boldface of at least ten-point type, the statement: The State of Nebraska has not reviewed and does not approve, recommend, endorse, or sponsor any seller-assisted marketing plan. The information contained in this disclosure has not been checked by the state. If you have any questions about

this purchase, see an attorney or other financial advisor before you sign a contract or agreement.

Nothing shall appear on the cover sheet except the title and the statement required by this section. A disclosure document prepared pursuant to sections 59-1733 to 59-1740 shall include a statement which either positively or negatively responds to each disclosure item required by sections 59-1733 and 59-1735 by use of a statement which fully incorporates the information required by the item. This disclosure document shall be given to the potential purchaser and held by the potential purchaser for at least forty-eight hours prior to the execution of a seller-assisted marketing contract or at least forty-eight hours prior to the receipt of any consideration.

**Source:** Laws 1979, LB 180, § 32; Laws 1983, LB 461, § 3; Laws 1993, LB 218, § 13; Laws 1995, LB 599, § 18.

**59-1733 Disclosure document; information; requirements.**

The disclosure document required by section 59-1732 shall contain the following information:

(1) The name of the seller, the name under which the seller is doing or intends to do business, the seller's principal business address, the seller's business form, including identification of the state under whose laws the seller is organized or incorporated, and the name, principal business address, and business form of any parent or affiliated company that will engage in business transactions with purchasers or accept responsibility for statements made by the seller;

(2) A statement of the initial payment charged or, when not known, a statement of approximate initial payment charged, and a statement of the amount of the initial payment to be paid to a person inducing, directly or indirectly, a purchaser to contract for the seller-assisted marketing plan;

(3) A full and detailed description of the actual services the seller will or may undertake to perform for the purchaser;

(4) The following legend shall be included in the disclosure document when the seller makes any statement concerning earnings or range of earnings that may be made through the seller-assisted marketing plan:

No guarantee of earnings or ranges of earnings can be made. The number of purchasers who have earned through this business an amount in excess of the amount of their initial payment is at least . . . . ., which represents . . . . . percent of the total number of purchasers of this seller-assisted marketing plan;

(5) A complete description of any training provided by or through the seller or any person recommended or specified by the seller, including the length of the training and a statement of any costs associated with the training which the purchaser will be responsible for paying;

(6) A complete description of any services to be performed by the seller or any person recommended or specified by the seller in connection with the placement of the equipment, product, or supplies at a location from which they will be sold or used, the full nature of those services, including a statement identifying any third party the seller may hire for such services and the nature of any agreement between the seller and the third party, as well as the nature of the agreements to be made with the owner or manager of the location at which

the purchaser's equipment, product, or supplies will be placed and any costs associated with such placement services which the purchaser will be responsible for paying;

(7) A statement completely and clearly disclosing the entire and precise nature of any arrangement (a) whereby the seller agrees to buy back the product, supplies, or equipment initially sold or (b) whereby the initial payment is secured, that the seller represented orally or in writing to exist when soliciting or offering for sale or lease or selling or leasing a seller-assisted marketing plan;

(8) A statement setting forth (a) the total number of seller-assisted marketing plans, which are the same as the plan described in the disclosure document, that have been set up or organized by the seller, (b) the number of such seller-assisted marketing plans in existence at the end of the preceding year, (c) the names, addresses, and telephone numbers of the ten seller-assisted marketing plan purchasers nearest the prospective purchaser's intended location. If less than ten seller-assisted marketing plan purchasers exist, the total number of purchasers shall be used, and (d) the total number of seller-assisted marketing plans the seller intends to set up in Nebraska and across the nation within the next twelve months; and

(9) Any other information which the Department of Banking and Finance may require by rule, regulation, or order, to be disclosed for the protection of purchasers.

**Source:** Laws 1979, LB 180, § 33; Laws 1983, LB 461, § 4; Laws 1993, LB 218, § 14; Laws 1995, LB 599, § 19; Laws 2001, LB 53, § 110.

**59-1734 Repealed. Laws 1983, LB 461, § 10.**

**59-1735 Disclosure document; contents; requirements.**

The disclosure document required by section 59-1732 shall contain the following:

(1) The name of and the office held by the seller's officers, directors, trustees, general or limited partners, and limited liability company members, as the case may be, and the names of those individuals who have management responsibilities in connection with the seller's business activities;

(2) A statement whether the seller or any person identified in subdivision (1) of this section:

(a) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(b) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices; or

(c) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department, including, but not limited to, action affecting any vocational license; and

(3) With respect to persons identified in subdivision (1) of this section:

(a) A description of their work experience for the past five years, including a list of principal occupations and employers during such time. Such five-year period shall run from the date of the disclosure filed with the Department of Banking and Finance; and

(b) A listing of each such person's educational background, including the names and addresses of schools attended, dates of attendance, and degrees received.

**Source:** Laws 1979, LB 180, § 35; Laws 1983, LB 461, § 5; Laws 1993, LB 218, § 15; Laws 1993, LB 121, § 380; Laws 1994, LB 884, § 77; Laws 1995, LB 599, § 20.

**59-1736 Seller; officers, directors, partners, managers; conviction or judgment; disclosure.**

The statements required by subdivision (2) of section 59-1735 shall set forth the court, the date of the conviction or of the judgment and, when involved, the name of the governmental agency that brought the action resulting in the conviction or judgment.

**Source:** Laws 1979, LB 180, § 36.

**59-1737 Disclosure document; disclose period of time plan sold or offered.**

The disclosure document required by section 59-1732 shall contain the length of time the seller of the plan has sold seller-assisted marketing plans, and the length of time the seller has sold the specific seller-assisted marketing plan being offered to the purchaser.

**Source:** Laws 1979, LB 180, § 37; Laws 1983, LB 461, § 6.

**59-1738 Disclosure document; disclose existence of bond or trust account.**

If the seller is required to secure a bond or establish a trust account pursuant to the requirements of sections 59-1726 to 59-1728, the disclosure document required by section 59-1732 shall state either:

(1) Seller has secured a bond issued by . . . . ., (name and address of surety company) a surety company admitted to do business in this state. Before signing a contract to purchase this seller-assisted marketing plan, you should check with the surety company to determine the bond's current status; or

(2) Seller has deposited with the Department of Banking and Finance information regarding its trust account. Before signing a contract to purchase this seller-assisted marketing plan, you should check with the Department of Banking and Finance to determine the current status of the trust account.

**Source:** Laws 1979, LB 180, § 38; Laws 1983, LB 461, § 7.

**59-1739 Disclosure document; contain financial information; verification.**

The disclosure document required by section 59-1732 shall contain a copy of a financial statement of the seller, not more than twelve months old, together with a statement of any material changes in the financial condition of the seller from the date thereof. Such financial statement shall either be audited or be signed under penalty of perjury by one of the seller's officers, directors, trustees, general or limited partners, or limited liability company members. The

declaration under penalty of perjury shall indicate that to the best of the signatory's knowledge and belief the information in the financial statement is true and accurate. If a seller is a subsidiary of another corporation which is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis, the information required by this section may be submitted in the same manner for the parent corporation if the corresponding financial statement of the seller is also provided and the parent corporation absolutely and irrevocably has agreed to guarantee all obligations of the seller.

**Source:** Laws 1979, LB 180, § 39; Laws 1983, LB 461, § 8; Laws 1993, LB 121, § 381; Laws 1994, LB 884, § 78.

**59-1740 Disclosure document; contain unexecuted copy of marketing plan contract.**

The disclosure document required by section 59-1732 shall contain an unexecuted copy of the entire seller-assisted marketing plan contract.

**Source:** Laws 1979, LB 180, § 40; Laws 1983, LB 461, § 9.

**59-1741 Seller-assisted marketing plan; contract for sale or lease; written; copy to purchaser.**

Every contract for sale or lease of a seller-assisted marketing plan in this state shall be in writing and shall be subject to the provisions of the Seller-Assisted Marketing Plan Act. A copy of the fully completed contract and all other documents the seller requires the purchaser to sign shall be given to the purchaser at the time such documents are signed.

**Source:** Laws 1979, LB 180, § 41; Laws 1993, LB 218, § 16.

**59-1742 Marketing plan contract; contents; requirements.**

Every seller-assisted marketing plan contract shall set forth in at least ten-point type or equivalent size if handwritten, the following:

(1) The terms and conditions of payment including the initial payment, additional payments, and downpayment required;

(2) A full and detailed description of the acts or services the seller will undertake to perform for the purchaser;

(3) The seller's principal business address and the name and address of its agent in the State of Nebraska authorized to receive service of process;

(4) The business form of the seller, whether a corporation, partnership, limited liability company, or otherwise;

(5) The delivery date or, when the contract provides for a staggered delivery of items to the purchaser, the approximate delivery date of those products, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to begin or maintain his or her business and whether the products, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser;

(6) A complete description of the nature of the buy-back or security arrangement, if the seller has represented orally or in writing when selling or leasing,

soliciting, or offering a seller-assisted marketing plan that there is a buy-back or that the initial payment is secured; and

(7) A statement which accurately sets forth a purchaser’s right to void the contract under the circumstances and in the manner set forth in sections 59-1752 to 59-1755.

**Source:** Laws 1979, LB 180, § 42; Laws 1993, LB 121, § 382.

**59-1743 Marketing plan contract; purchaser; right to cancel; when.**

The purchaser shall have the right to cancel a seller-assisted marketing plan contract for any reason at any time within three business days of the date the purchaser and the seller sign the contract pursuant to section 59-1744. The notice of the right to cancel and the procedures to be followed when a contract is canceled shall comply with sections 59-1743 and 59-1744.

**Source:** Laws 1979, LB 180, § 43.

**59-1744 Marketing plan contract; contain notice of right to cancel.**

Every seller-assisted marketing plan contract shall set forth immediately above the place at which the purchaser signs the contract in at least ten-point type the following:

You have three business days in which you may cancel this contract for any reason by mailing or delivering written notice to the seller-assisted marketing plan seller. The three business days shall expire on . . . . ., (last date to mail or deliver notice) and notice of cancellation should be mailed to . . . . ., (seller-assisted marketing plan seller’s name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and post-marked before midnight of the above date. If you choose to deliver your notice to the seller directly, it must be delivered to him or her by the end of his or her normal business day on the above date. Within five business days of receipt of the notice of cancellation, the seller shall return to the purchaser all sums paid by the purchaser to the seller pursuant to this contract. Within five business days after receipt of all such sums, the purchaser shall make available at his or her address or at the place at which they were caused to be located, all equipment, products, and supplies provided to the purchaser pursuant to this contract. Upon demand of the seller, such equipment, products, and supplies shall be made available at the time the purchaser receives full repayment by cash, money order, or certified check.

**Source:** Laws 1979, LB 180, § 44.

**59-1745 Marketing plan contract; execution of certain notes prohibited.**

No seller-assisted marketing plan contract shall require or entail the execution of any note or series of notes by the purchaser which, when separately negotiated, will cut off as to third parties any right of action or defense which the purchaser may have against the seller.

**Source:** Laws 1979, LB 180, § 45.

**59-1746 Marketing plan contract; downpayment; conditions.**

If the contract referred to in section 59-1741 provides for a downpayment to be paid to the seller, the downpayment shall not exceed twenty percent of the

initial payment amount. In no event shall the contract payment schedule provide for the seller to receive more than twenty percent of the initial payment before delivery to the purchaser, or to the place at which they are to be located, the equipment, supplies, or products, unless all sums in excess of twenty percent are placed in an escrow account which cannot be released until the purchaser notifies the escrow agent in writing of the delivery of such equipment, supplies, or products. Notification of delivery by the purchaser to the escrow agent shall not be unreasonably withheld.

**Source:** Laws 1979, LB 180, § 46.

**59-1747 Marketing plan contract; assignee; rights, defenses.**

Any assignee of the seller-assisted marketing plan contract or the seller's rights is subject to all equities, rights, and defenses of the purchaser against the seller.

**Source:** Laws 1979, LB 180, § 47.

**59-1748 Reference to compliance with act; prohibited.**

No seller shall make or authorize the making of any reference to its compliance with the Seller-Assisted Marketing Plan Act.

**Source:** Laws 1979, LB 180, § 48; Laws 1993, LB 218, § 17.

**59-1749 Marketing plan; seller; records required.**

Every seller subject to the Seller-Assisted Marketing Plan Act shall at all times keep and maintain a complete set of books, records, and accounts of seller-assisted marketing plan sales made by the seller. All documents relating to each specific seller-assisted marketing plan sold or leased shall be maintained for four years after the date of the seller-assisted marketing plan contract.

**Source:** Laws 1979, LB 180, § 49; Laws 2003, LB 217, § 43.

**59-1750 Seller-assisted marketing plan; service of process.**

Selling or offering to sell a seller-assisted marketing plan in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the seller in any action arising under the Seller-Assisted Marketing Plan Act.

**Source:** Laws 1979, LB 180, § 50; Laws 1983, LB 447, § 77; Laws 1993, LB 218, § 18.

**59-1751 Seller; surety bond or trust account; establish; procedures.**

If, pursuant to section 59-1728, a seller must obtain a surety bond or establish a trust account, the following procedures shall apply:

(1) If a bond is obtained, a copy of it shall be filed with the Department of Banking and Finance, and if a trust account is established, notification of the depository, the trustee, and the account number shall be filed with the Department of Banking and Finance;

(2) The bond or trust account required shall run in favor of the State of Nebraska for the benefit of any person who is damaged by any violation of the Seller-Assisted Marketing Plan Act or by the seller's breach of a contract subject



to the act or of any obligation arising therefrom. The bond or trust account shall also run in favor of any person damaged by such practices;

(3) Any person claiming against the bond or trust account for a violation of the act may maintain an action at law against the seller and the surety or trustee. The aggregate liability of the surety or trustee to all persons damaged by a seller's violation of the act shall in no event exceed the amount of the bond or trust account; and

(4) The bond or the trust account shall be in an amount equal to the total amount of the initial payment of all seller-assisted marketing plan contracts which the seller has entered into during the previous year or three hundred thousand dollars, whichever is less, but in no case shall the amount be less than fifty thousand dollars. The amount required shall be adjusted twice a year. Such adjustment shall occur no later than the tenth day of the first month of the seller's fiscal year and no later than the tenth day of the seventh month of the seller's fiscal year. A seller need only establish a bond or trust account in the amount of fifty thousand dollars at the commencement of business and during the first six months the seller is in business. By the tenth day of the seller's seventh month in business, the amount of the bond shall be established as provided for in this section as if the seller had been in business for a year.

**Source:** Laws 1979, LB 180, § 51; Laws 1993, LB 218, § 19.

**59-1752 Seller; noncompliance with act; contract; voidable; purchaser; remedies.**

If (1) a seller uses any untrue or misleading statements relating to a seller-assisted marketing plan, (2) a seller fails to provide the disclosure documents or disclose any of the information required by sections 59-1732 to 59-1740, or (3) the contract does not comply with the requirements of the Seller-Assisted Marketing Plan Act, then within one year of the date of the contract at the election of the purchaser upon written notice to the seller, the contract shall be voidable by the purchaser and unenforceable by the seller or his or her assignee as contrary to public policy and the purchaser shall be entitled to receive from the seller all sums paid to the seller when the purchaser is able to return all equipment, supplies, or products delivered by the seller. When such complete return cannot be made, the purchaser shall be entitled to receive from the seller all sums paid to the seller less the fair market value at the time of delivery of the equipment, supplies, or products not returned by the purchaser, but delivered by the seller. Upon the receipt of such sums, the purchaser shall make available to the seller, at the purchaser's address or at the places at which they are located at the time the purchaser gives notice pursuant to this section, the products, equipment, or supplies received by the purchaser from the seller.

**Source:** Laws 1979, LB 180, § 52; Laws 1993, LB 218, § 20.

**59-1753 Seller; inadvertent defects; cure; purchaser; rights.**

If the seller inadvertently has failed to make any of the disclosures required by sections 59-1732 to 59-1740 or the contract inadvertently fails to comply with the requirements of the Seller-Assisted Marketing Plan Act, the seller may cure such inadvertent defect by providing the purchaser with the correct disclosure documents or contract if at the time of providing such correct disclosures or contract the seller also informs the purchaser in writing that because of the seller's error, the purchaser shall have an additional fifteen-day

period after receipt of the correct disclosures or contract within which to cancel the contract and receive a full return of all money paid in exchange for return of whatever equipment, supplies, or products the purchaser has. If the purchaser does not cancel the contract within fifteen days after receipt of the correct disclosures or contract, he or she may not in the future exercise his or her right to void the contract under this section and sections 59-1752, 59-1754, and 59-1755 due to such noncompliance with the disclosure or contract requirements of the act.

**Source:** Laws 1979, LB 180, § 53; Laws 1993, LB 218, § 21.

**59-1754 Seller; failure to deliver products; contract voidable.**

If a seller fails to deliver the equipment, supplies, or products within thirty days of the delivery date stated in the contract, unless such delivery delay is beyond the control of the seller, then at any time prior to delivery or within thirty days after delivery, at the election of the purchaser upon written notice to the seller, the contract shall be voidable by the purchaser and unenforceable by the seller or his or her assignee.

**Source:** Laws 1979, LB 180, § 54.

**59-1755 Purchaser rights; cumulative.**

The rights of the purchaser set forth in sections 59-1752 to 59-1754 shall be cumulative to all other rights under the Seller-Assisted Marketing Plan Act or otherwise.

**Source:** Laws 1979, LB 180, § 55; Laws 1993, LB 218, § 22.

**59-1756 Purchaser; waiver of rights; unenforceable.**

Any waiver by a purchaser of the provisions of the Seller-Assisted Marketing Plan Act shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by a seller to have a purchaser waive rights given by the act shall be a violation of the act.

**Source:** Laws 1979, LB 180, § 56; Laws 1993, LB 218, § 23.

**59-1757 Prohibited acts; violation; penalty; enforcement.**

(1) No person shall, in connection with the offer, purchase, lease, or sale of any seller-assisted marketing plan:

(a) Use the trademark, service mark, trade name, logotype, or advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity unless it is clear from the circumstances that the owner of the commercial symbol has knowledge of and consents to such use and is not involved in the sale of the business opportunity;

(b) Make any claim or representation in advertising or promotional material or in any oral sales presentation, solicitation, or discussion between the seller and a prospective purchaser which is inconsistent with the information required to be disclosed by the Seller-Assisted Marketing Plan Act;

(c) Make or cause to be made any representation to any prospective purchaser that the Department of Banking and Finance has found any document filed

under the act to be true, complete, and not misleading or has passed in any way upon the merits of or recommended or given approval to any seller-assisted marketing plan; or

(d) Directly or indirectly (i) employ any device, scheme, or artifice to defraud, (ii) make any untrue statement of a material fact or omit to state a material fact, or (iii) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) Any person, including, but not limited to, the seller, a salesperson, agent, or representative of the seller, or an independent contractor who attempts to sell or lease or sells or leases a seller-assisted marketing plan, who willfully violates any provision of the act or any order issued pursuant to section 59-1725.01 in connection with the offer, purchase, lease, or sale of any seller-assisted marketing plan shall be guilty of a Class IV felony.

(3) The Director of Banking and Finance may refer such evidence as is available concerning violations of the Seller-Assisted Marketing Plan Act or any order of the director to the Attorney General or county attorney who may, with or without reference from the director, initiate criminal proceedings pursuant to the act.

**Source:** Laws 1979, LB 180, § 57; Laws 1993, LB 218, § 24.

**59-1758 Violation; action for recovery of damages; award; statute of limitations.**

(1) Any purchaser injured by a violation of the Seller-Assisted Marketing Plan Act or by the seller's breach of a contract subject to the act or of any obligation arising from the sale or lease of the seller-assisted marketing plan may bring an action for recovery of damages. Judgment shall be entered for actual damages suffered by the purchaser, plus reasonable attorney's fees and costs. When the purchaser is able to return all the equipment, supplies, or products delivered by the seller, the actual damages awarded shall not be less than the amount of the initial payment. When such complete return cannot be made, the actual damages awarded shall not be less than the amount of the initial payment less the fair market value at the time of delivery of the equipment, supplies, or products that cannot be returned but were actually delivered by the seller.

(2) Any action brought pursuant to this section shall be commenced within five years of the date of the sale of the seller-assisted marketing plan.

**Source:** Laws 1979, LB 180, § 58; Laws 1993, LB 218, § 25.

**59-1758.01 Burden of proof.**

In any proceeding under the provisions of the Seller-Assisted Marketing Plan Act, the burden of proving an exemption or an exclusion from a definition or from the provisions of the act shall be upon the person claiming it.

**Source:** Laws 1993, LB 218, § 26; Laws 2003, LB 217, § 45.

**59-1759 Remedies; not exclusive.**

The provisions of the Seller-Assisted Marketing Plan Act are not exclusive. The remedies provided for violation of any provision of the act or for conduct prescribed by any provision of the act shall be in addition to any other

procedures or remedies for any violation or conduct provided for in any other law.

**Source:** Laws 1979, LB 180, § 59; Laws 1993, LB 218, § 28.

**59-1760 Statutory or common-law rights; available.**

Nothing in the Seller-Assisted Marketing Plan Act shall limit any statutory or common-law rights of the Attorney General, any county attorney, or any city attorney, or any other person. If any act or practice prescribed under the Seller-Assisted Marketing Plan Act also constitutes a cause of action in common law or a violation of another statute, the purchaser may assert such common-law or statutory cause of action under the procedures and with the remedies provided for in such other law.

**Source:** Laws 1979, LB 180, § 60; Laws 1993, LB 218, § 29.

**59-1761 Unfair competition and deceptive practices statutes; applicable.**

Actions and transaction prohibited by the Seller-Assisted Marketing Plan Act shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of such section.

**Source:** Laws 1979, LB 180, § 61; Laws 1993, LB 218, § 30.

**59-1762 Director of Banking and Finance; powers; rules and regulations.**

In addition to specific authority granted elsewhere in the Seller-Assisted Marketing Plan Act, the Director of Banking and Finance may adopt and promulgate rules, regulations, orders, or forms as are necessary to carry out the act. No rule, regulation, order, or form may be adopted unless the director finds that the action is necessary or appropriate in the public interest or for the protection of purchasers and potential purchasers and is consistent with the purposes fairly intended by the policy and provisions of the act. All rules, regulations, orders, and forms of the director and the Department of Banking and Finance shall be published.

**Source:** Laws 1993, LB 218, § 27.

## ARTICLE 18

### CHARITABLE GIFT ANNUITY ACT

Section

59-1801. Act, how cited.

59-1802. Terms, defined.

59-1803. Issuance of annuity; how construed.

**59-1801 Act, how cited.**

Sections 59-1801 to 59-1803 shall be known and may be cited as the Charitable Gift Annuity Act.

**Source:** Laws 1996, LB 972, § 1.

**59-1802 Terms, defined.**

For purposes of the Charitable Gift Annuity Act:

(1) Charitable gift annuity means a charitable gift annuity described by section 501(m)(5) and section 514(c)(5) of the Internal Revenue Code that is

issued prior to, on, or after March 26, 1996, by a charitable organization that, on the date of the annuity agreement, has been in continuous operation for at least three years or is the successor or affiliate of a charitable organization that has been in continuous operation for at least three years; and

(2) Charitable organization means any entity described in section 170(c) or section 501(c)(3) of the Internal Revenue Code.

**Source:** Laws 1996, LB 972, § 2.

**59-1803 Issuance of annuity; how construed.**

Issuance of a charitable gift annuity does not constitute:

- (1) Engaging in business as a trust company subject to the Nebraska Trust Company Act;
- (2) Engaging in the business of insurance subject to Chapter 44;
- (3) Engaging in an act in violation of sections 59-801 to 59-831;
- (4) Engaging in an act in violation of the Viatical Settlements Act; or
- (5) Engaging in an act in violation of the Uniform Deceptive Trade Practices Act. Conduct other than issuance of a charitable gift annuity, including the marketing of a charitable gift annuity, is not exempt from application of the Uniform Deceptive Trade Practices Act pursuant to this subdivision.

**Source:** Laws 1996, LB 972, § 3; Laws 1998, LB 1321, § 98; Laws 2001, LB 52, § 57; Laws 2002, LB 1278, § 34.

**Cross References**

**Nebraska Trust Company Act**, see section 8-201.01.

**Uniform Deceptive Trade Practices Act**, see section 87-306.

**Viatical Settlements Act**, see section 44-1101.



## MOTOR VEHICLES

# CHAPTER 60 MOTOR VEHICLES

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## ARTICLE 1

### MOTOR VEHICLE CERTIFICATE OF TITLE ACT

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#### **60-101 Act, how cited.**

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

**Source:** Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1; Laws 2009, LB49, § 5; Laws 2009, LB202, § 10; Laws 2010, LB650, § 3; Laws 2011, LB289, § 6; Laws 2012, LB1155, § 2; Laws 2015, LB231, § 2; Laws 2017, LB263, § 7; Laws 2018, LB909, § 7; Laws 2019, LB156, § 1.

#### **60-102 Definitions, where found.**

For purposes of the Motor Vehicle Certificate of Title Act, unless the context otherwise requires, the definitions found in sections 60-103 to 60-136.01 shall be used.

**Source:** Laws 2005, LB 276, § 2; Laws 2007, LB286, § 2; Laws 2010, LB650, § 4; Laws 2012, LB1155, § 3; Laws 2015, LB231, § 3; Laws 2017, LB263, § 8; Laws 2018, LB909, § 8; Laws 2019, LB156, § 2.

**60-103 All-terrain vehicle, defined.**

All-terrain vehicle means any motorized off-highway device which (1) is fifty inches or less in width, (2) has a dry weight of twelve hundred pounds or less, (3) travels on three or more nonhighway tires, and (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.

**Source:** Laws 2005, LB 276, § 3; Laws 2014, LB814, § 3.

**60-104 Assembled vehicle, defined.**

Assembled vehicle means a vehicle which was manufactured or assembled less than thirty years prior to application for a certificate of title and which is materially altered from its construction by the removal, addition, or substitution of new or used major component parts unless such major component parts were replaced under warranty by the original manufacturer of the vehicle. Its make shall be assembled, and its model year shall be the year in which the vehicle was assembled.

**Source:** Laws 2005, LB 276, § 4; Laws 2018, LB909, § 9.

**60-104.01 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) having antilock brakes, (4) designed to be controlled with a steering wheel and pedals, and (5) in which the operator and passenger ride either side by side or in tandem in a seating area that is equipped with a manufacturer-installed three-point safety belt system for each occupant and that has a seating area that either (a) is completely enclosed and is equipped with manufacturer-installed airbags and a manufacturer-installed roll cage or (b) is not completely enclosed and is equipped with a manufacturer-installed rollover protection system.

**Source:** Laws 2015, LB231, § 4; Laws 2018, LB909, § 10.

**60-104.02 Auxiliary axle, defined.**

Auxiliary axle means an auxiliary undercarriage assembly with a fifth wheel and tow bar used to convert a semitrailer to a full trailer, commonly known as converter gears or converter dollies.

**Source:** Laws 2018, LB909, § 11.

**60-105 Body, defined.**

Body means that portion of a vehicle which determines its shape and appearance and is attached to the frame. Body does not include the box or bed of a truck.

**Source:** Laws 2005, LB 276, § 5; Laws 2012, LB751, § 6.

**60-106 Bus, defined.**

Bus means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other

than a taxicab, designed and used for the transportation of persons for compensation.

**Source:** Laws 2005, LB 276, § 6.

**60-107 Cabin trailer, defined.**

Cabin trailer means a trailer or a semitrailer, which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, whether used for such purposes or instead permanently or temporarily for the advertising, sale, display, or promotion of merchandise or services or for any other commercial purpose except transportation of property for hire or transportation of property for distribution by a private carrier. Cabin trailer does not mean a trailer or semitrailer which is permanently attached to real estate. There are four classes of cabin trailers:

(1) Camping trailer which includes cabin trailers one hundred two inches or less in width and forty feet or less in length and adjusted mechanically smaller for towing;

(2) Mobile home which includes cabin trailers more than one hundred two inches in width or more than forty feet in length;

(3) Travel trailer which includes cabin trailers not more than one hundred two inches in width nor more than forty feet in length from front hitch to rear bumper, except as provided in subdivision (2)(k) of section 60-6,288; and

(4) Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent frame and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, except that manufactured home includes any structure that meets all of the requirements of this subdivision other than the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as such act existed on January 1, 2021, 42 U.S.C. 5401 et seq.

**Source:** Laws 2005, LB 276, § 7; Laws 2008, LB797, § 1; Laws 2019, LB79, § 1; Laws 2020, LB944, § 5; Laws 2021, LB149, § 1.  
Effective date August 28, 2021.

**60-107.01 Car toter or tow dolly, defined.**

Car toter or tow dolly means a two-wheeled conveyance designed or adapted to support the weight of one axle of a motor vehicle while being towed in combination behind another motor vehicle.

**Source:** Laws 2018, LB909, § 12.

**60-108 Collector, defined.**

Collector means the owner of one or more vehicles of historical interest who collects, purchases, acquires, trades, or disposes of such vehicles or parts

thereof for his or her own use in order to preserve, restore, and maintain a vehicle or vehicles for hobby purposes.

**Source:** Laws 2005, LB 276, § 8.

**60-109 Commercial trailer, defined.**

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, or utility trailers.

**Source:** Laws 2005, LB 276, § 9.

**60-110 Department, defined.**

Department means the Department of Motor Vehicles.

**Source:** Laws 2005, LB 276, § 10.

**60-111 Repealed. Laws 2012, LB 801, § 102.**

**60-112 Director, defined.**

Director means the Director of Motor Vehicles.

**Source:** Laws 2005, LB 276, § 12.

**60-113 Electric personal assistive mobility device, defined.**

Electric personal assistive mobility device means a self-balancing, two-non-tandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

**Source:** Laws 2005, LB 276, § 13.

**60-114 Farm trailer, defined.**

Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products as defined in section 60-304 to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services.

**Source:** Laws 2005, LB 276, § 14; Laws 2007, LB286, § 3.

**60-115 Fertilizer trailer, defined.**

Fertilizer trailer means any trailer, including gooseneck applicators or trailers, designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and having a gross weight, including load thereon, of twenty thousand pounds or less.

**Source:** Laws 2005, LB 276, § 15.

**60-115.01 Former military vehicle, defined.**

Former military vehicle means a motor vehicle that was manufactured for use in any country's military forces and is maintained to accurately represent its military design and markings, regardless of the vehicle's size or weight, but is no longer used, or never was used, by a military force.

**Source:** Laws 2019, LB156, § 3.

**60-116 Frame, defined.**

Frame means that portion of a vehicle upon which other components are affixed, such as the engine, body, or transmission.

**Source:** Laws 2005, LB 276, § 16.

**60-116.01 Golf car vehicle, defined.**

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes.

**Source:** Laws 2012, LB1155, § 4.

**60-117 Historical vehicle, defined.**

Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

**Source:** Laws 2005, LB 276, § 17; Laws 2006, LB 663, § 2; Laws 2007, LB286, § 4.

**60-118 Inspection, defined.**

Inspection means an identification inspection conducted pursuant to section 60-146.

**Source:** Laws 2005, LB 276, § 18.

**60-119 Kit vehicle, defined.**

Kit vehicle means a vehicle which was assembled by a person other than a generally recognized manufacturer of vehicles by the use of a reproduction resembling a specific manufacturer's make and model that is at least thirty years old purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin. Kit vehicle does not include glider kits.

**Source:** Laws 2005, LB 276, § 19; Laws 2018, LB909, § 13.

**60-119.01 Low-speed vehicle, defined.**

Low-speed vehicle means a (1) four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49

C.F.R. part 571, as such part existed on January 1, 2021, or (2) three-wheeled motor vehicle (a) whose maximum speed attainable is not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) which is equipped with a windshield and an occupant protection system. A motorcycle with a sidecar attached is not a low-speed vehicle.

**Source:** Laws 2007, LB286, § 5; Laws 2011, LB289, § 7; Laws 2016, LB929, § 1; Laws 2017, LB263, § 12; Laws 2018, LB909, § 14; Laws 2019, LB79, § 2; Laws 2019, LB270, § 6; Laws 2020, LB944, § 6; Laws 2021, LB149, § 2.  
Effective date August 28, 2021.

#### **60-119.02 Licensed dealer, defined.**

Licensed dealer means a motor vehicle dealer, motorcycle dealer, or trailer dealer licensed under the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2017, LB263, § 9.

#### **Cross References**

**Motor Vehicle Industry Regulation Act**, see section 60-1401.

#### **60-120 Major component part, defined.**

Major component part means an engine, with or without accessories, a transmission, a cowl, a door, a frame, a body, a rear clip, or a nose.

**Source:** Laws 2005, LB 276, § 20.

#### **60-121 Minibike, defined.**

Minibike means a two-wheel device which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel device primarily designed by the manufacturer for off-road use only. Minibike does not include an electric personal assistive mobility device.

**Source:** Laws 2005, LB 276, § 21.

#### **60-121.01 Minitruck, defined.**

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

**Source:** Laws 2010, LB650, § 5; Laws 2012, LB898, § 1.

#### **60-122 Moped, defined.**

Moped means a device with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not



exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 2005, LB 276, § 22; Laws 2015, LB95, § 3.

**60-123 Motor vehicle, defined.**

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snow-mobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) bicycles as defined in section 60-611.

**Source:** Laws 2005, LB 276, § 23; Laws 2006, LB 765, § 1; Laws 2007, LB286, § 6; Laws 2010, LB650, § 6; Laws 2011, LB289, § 8; Laws 2012, LB1155, § 5; Laws 2015, LB95, § 4.

**60-124 Motorcycle, defined.**

Motorcycle means any motor vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground. Motorcycle includes an autocycle.

**Source:** Laws 2005, LB 276, § 24; Laws 2015, LB231, § 5; Laws 2018, LB909, § 15.

**60-125 Nose, defined.**

Nose means that portion of the body of a vehicle from the front to the firewall when acquired or transferred as a complete unit.

**Source:** Laws 2005, LB 276, § 25.

**60-126 Parts vehicle, defined.**

Parts vehicle means a vehicle the title to which has been surrendered (1) in accordance with subdivision (1)(a) of section 60-169 or (2) to any other state by the owner of the vehicle or an insurance company to render the vehicle fit for sale for scrap and parts only.

**Source:** Laws 2005, LB 276, § 26; Laws 2011, LB241, § 1.

**60-127 Patrol, defined.**

Patrol means the Nebraska State Patrol.

**Source:** Laws 2005, LB 276, § 27.

**60-128 Rear clip, defined.**

Rear clip means two or more of the following, all dismantled from the same vehicle: A quarter panel or fender; a floor panel assembly; or a trunk lid or gate.

**Source:** Laws 2005, LB 276, § 28.

**60-128.01 Reconstructed, defined.**

Reconstructed means the designation of a vehicle which was permanently altered from its original design construction by removing, adding, or substituting major component parts.

**Source:** Laws 2018, LB909, § 16.

**60-128.02 Replica, defined.**

Replica means the designation of a vehicle which resembles a specific manufacturer's make and model that is at least thirty years old and which has been assembled as a kit vehicle.

**Source:** Laws 2018, LB909, § 17.

**60-129 Semitrailer, defined.**

Semitrailer means any trailer so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle. Semitrailer does not include an auxiliary axle or a car toter or tow dolly.

**Source:** Laws 2005, LB 276, § 29; Laws 2018, LB909, § 18.

**60-130 Situs, defined.**

Situs means the tax district where a vehicle is stored and kept for the greater portion of the calendar year. For a vehicle used or owned by a student, the situs is at the place of residence of the student if different from the place at which he or she is attending school.

**Source:** Laws 2005, LB 276, § 30.

**60-131 Specially constructed vehicle, defined.**

Specially constructed vehicle means a vehicle which was not originally constructed under a distinctive name, make, model, or type by a manufacturer of vehicles. The term specially constructed vehicle includes kit vehicle.

**Source:** Laws 2005, LB 276, § 31.

**60-132 Superintendent, defined.**

Superintendent means the Superintendent of Law Enforcement and Public Safety.

**Source:** Laws 2005, LB 276, § 32.

**60-133 Trailer, defined.**

Trailer means any device without motive power designed for carrying persons or property and being towed by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle. Trailer does not include an auxiliary axle or a car toter or tow dolly.

**Source:** Laws 2005, LB 276, § 33; Laws 2018, LB909, § 19.

**60-134 Truck, defined.**

Truck means any motor vehicle designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

**Source:** Laws 2005, LB 276, § 34; Laws 2007, LB286, § 7.

**60-135 Utility trailer, defined.**

Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less.

**Source:** Laws 2005, LB 276, § 35.

**60-135.01 Utility-type vehicle, defined.**

(1) Utility-type vehicle means any motorized off-highway device which (a) is seventy-four inches in width or less, (b) is not more than one hundred eighty inches, including the bumper, in length, (c) has a dry weight of two thousand pounds or less, and (d) travels on four or more nonhighway tires.

(2) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

**Source:** Laws 2010, LB650, § 7; Laws 2012, LB1155, § 6; Laws 2013, LB223, § 1; Laws 2014, LB814, § 4.

**60-136 Vehicle, defined.**

Vehicle means a motor vehicle, all-terrain vehicle, utility-type vehicle, mini-bike, trailer, or semitrailer.

**Source:** Laws 2005, LB 276, § 36; Laws 2010, LB650, § 8.

**60-136.01 Vehicle identification number, defined.**

Vehicle identification number means a series of English letters or Arabic or Roman numerals assigned to a vehicle for identification purposes.

**Source:** Laws 2007, LB286, § 8.

**60-137 Act; applicability.**

(1) The Motor Vehicle Certificate of Title Act applies to all vehicles as defined in the act, except:

- (a) Farm trailers;
- (b) Well-boring apparatus, backhoes, bulldozers, and front-end loaders; and
- (c) Trucks and buses from other jurisdictions required to pay registration fees under the Motor Vehicle Registration Act, except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198.

(2)(a) All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain

vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the department.

(b) All new low-speed vehicles sold on or after January 1, 2012, shall be required to have a certificate of title. An owner of a low-speed vehicle sold prior to such date may apply for a certificate of title for such low-speed vehicle as provided in rules and regulations of the department.

(3) An owner of a utility trailer may apply for a certificate of title upon compliance with the Motor Vehicle Certificate of Title Act.

(4)(a) Every owner of a manufactured home or mobile home shall obtain a certificate of title for the manufactured home or mobile home prior to affixing it to real estate.

(b) If a manufactured home or mobile home has been affixed to real estate and a certificate of title was not issued before it was so affixed, the owner of such manufactured home or mobile home shall apply for and be issued a certificate of title at any time for surrender and cancellation as provided in section 60-169.

(5) All new utility-type vehicles sold on or after January 1, 2011, shall be required to have a certificate of title. An owner of a utility-type vehicle sold prior to such date may apply for a certificate of title for such utility-type vehicle as provided in rules and regulations of the department.

**Source:** Laws 2005, LB 276, § 37; Laws 2006, LB 765, § 2; Laws 2007, LB286, § 9; Laws 2008, LB953, § 2; Laws 2010, LB650, § 9; Laws 2011, LB289, § 9.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Under the Nebraska Certificate of Title Act, a certificate of title is the exclusive method provided by statute for the transfer

of title to an automobile, but it is not conclusive of ownership. *First Nat. Bank & Trust Co. v. Ohio Cas. Ins. Co.*, 196 Neb. 595, 244 N.W.2d 209 (1976).

Certificate of Title Act applies to all motor vehicles required to be licensed with specified exceptions. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

**60-138 Manufacturer’s or importer’s certificate; vehicle identification number.**

No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a new vehicle to a dealer to be used by such dealer for purposes of display and resale without (1) delivering to such dealer a duly executed manufacturer’s or importer’s certificate with such assignments as may be necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No dealer shall purchase or acquire a new vehicle without obtaining from the seller such manufacturer’s or importer’s certificate.

**Source:** Laws 2005, LB 276, § 38.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for

such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

**60-139 Certificate of title; vehicle identification number; required; when.**

Except as provided in section 60-137, 60-138, 60-142, or 60-142.01, no person shall sell or otherwise dispose of a vehicle without (1) delivering to the

purchaser or transferee of such vehicle a certificate of title with such assignments thereon as are necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No person shall bring into this state a vehicle for which a certificate of title is required in Nebraska, except for temporary use, without complying with the Motor Vehicle Certificate of Title Act.

No purchaser or transferee shall receive a certificate of title which does not contain such assignments as are necessary to show title in the purchaser or transferee. Possession of a certificate of title which does not comply with this requirement shall be prima facie evidence of a violation of this section, and such purchaser or transferee, upon conviction, shall be subject to the penalty provided by section 60-180.

**Source:** Laws 2005, LB 276, § 39; Laws 2006, LB 663, § 3; Laws 2011, LB241, § 2.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Policies of motor vehicle liability insurance were construed in the light of the provisions of this and two succeeding sections. *Turpin v. Standard Reliance Ins. Co.*, 169 Neb. 233, 99 N.W.2d 26 (1959).

Upon sale of motor vehicle, seller must deliver to purchaser a certificate of title. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

Licensed automobile dealer is required to have mortgage lien noted on certificate of title. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

Seller is required to deliver certificate of title to purchaser in order to pass title. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

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

(1) Except as provided in section 60-164, no person acquiring a vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or entity or person, shall acquire any right, title, claim, or interest in or to such vehicle until the acquiring person has had delivered to him or her physical possession of such vehicle and (a) a certificate of title or a duly executed manufacturer's or importer's certificate with such assignments as are necessary to show title in the purchaser, (b) a written instrument as required by section 60-1417, (c) an affidavit and notarized bill of sale as provided in section 60-142.01, or (d) a bill of sale for a parts vehicle as required by section 60-142.

(2) No waiver or estoppel shall operate in favor of such person against a person having physical possession of such vehicle and such documentation. No court shall recognize the right, title, claim, or interest of any person in or to a vehicle, for which a certificate of title has been issued in Nebraska, sold, disposed of, mortgaged, or encumbered, unless there is compliance with this section. Beginning on the implementation date of the electronic title and lien system designated by the director pursuant to section 60-164, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a vehicle.

**Source:** Laws 2005, LB 276, § 40; Laws 2006, LB 663, § 4; Laws 2009, LB202, § 11; Laws 2011, LB241, § 3.

1. Necessity of procurement
2. Effect as evidence
3. Miscellaneous

#### 1. Necessity of procurement

One who purchases an automobile and obtains possession thereof but does not obtain a duly assigned certificate of title thereto acquires no ownership interest in the automobile. *Boren*

*v. State Farm Mut. Auto. Ins. Co.*, 225 Neb. 503, 406 N.W.2d 640 (1987).

Where automobiles are wrongfully sold by an agent, but no certificate of title is given, the owner of the certificate of title

retains ownership and control of the automobiles. *Wolfson Car Leasing Co., Inc. v. Weberg*, 200 Neb. 420, 264 N.W.2d 178 (1978).

To be protected, issuance of certificate must be based upon a proper background of authority. *Allstate Ins. Co. v. Enzolera*, 164 Neb. 38, 81 N.W.2d 588 (1957).

A certificate of title is essential to sustain an allegation of general ownership of an automobile in a replevin action. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

A purchaser who receives possession of an automobile without obtaining a certificate of title acquires no title or ownership. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

Certificate of title for a motor vehicle is a security within the meaning of 18 U.S.C. section 2311 (1976). *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983).

### 2. Effect as evidence

A certificate of title is prima facie evidence, but is not conclusive proof of ownership between either a buyer and seller or a buyer and manufacturer of an allegedly defective motor vehicle. *Hanson v. General Motors Corp.*, 241 Neb. 81, 486 N.W.2d 223 (1992).

As between the buyer and seller of a motor vehicle, the certificate of title is prima facie evidence, but is not conclusive proof, of ownership under the Nebraska certificate of title sections. *Alford v. Neal*, 229 Neb. 67, 425 N.W.2d 325 (1988).

A certificate of title to a motor vehicle is generally conclusive evidence of ownership of the vehicle, and exceptions to this rule apply only to prevent fraud and coercion. *Kinkenon v. Hue*, 207 Neb. 698, 301 N.W.2d 77 (1981).

Execution of a certificate of title is the exclusive method of conveying ownership of a motor vehicle, but the certificate is not in itself conclusive evidence of ownership. *Weiss v. Union Ins. Co.*, 202 Neb. 469, 276 N.W.2d 88 (1979).

If dealer had actual possession of motor vehicle and a manufacturer's certificate, his name need not be shown as assignee in certificate to prove ownership. *State v. Oltjenbruns*, 187 Neb. 694, 193 N.W.2d 744 (1972).

Plaintiff did not show grounds why wife's name on title to car, which established ownership, should be removed. *Forman v. Anderson*, 183 Neb. 715, 163 N.W.2d 894 (1969).

Certificate of title was conclusive on question of ownership of motor vehicle. *Turpin v. Standard Reliance Ins. Co.*, 169 Neb. 233, 99 N.W.2d 26 (1959).

A certificate of title is generally conclusive evidence of ownership. *Terry Bros. & Meves v. National Auto Ins. Co.*, 160 Neb. 110, 69 N.W.2d 361 (1955).

Certificate of title is not conclusive of ownership. *Snyder v. Lincoln*, 156 Neb. 190, 55 N.W.2d 614 (1952); *Snyder v. Lincoln*, 150 Neb. 580, 35 N.W.2d 483 (1948).

Certificate of title was evidence of ownership of motor vehicle. *Garbark v. Newman*, 155 Neb. 188, 51 N.W.2d 315 (1952).

### 3. Miscellaneous

Proof of possession of a vehicle, together with a bill of sale which complies with section 60-1417 (Reissue 1978), is suffi-

cient to prove ownership of the vehicle under this section. *Worley v. Schaefer*, 228 Neb. 484, 423 N.W.2d 748 (1988).

A buyer in the ordinary course of business who purchases from a dealer having the authority to expose vehicles for sale pursuant to the entrustment section of the U.C.C., section 2-403, does not fall within the intended purview of this section. *Dugdale of Nebraska v. First State Bank*, 227 Neb. 729, 420 N.W.2d 273 (1988).

Absent notarization of the seller's signature on the certificate of title, the certificate is not duly executed and ownership may not yet pass to the buyer; a purchaser who receives possession of an automobile without also obtaining a certificate of title properly notarized and duly executed in accordance with the statutes then in effect acquires no right, title, claim, or interest in or to the motor vehicle. *State Farm Mut. Auto. Ins. Co. v. Fitzgerald*, 214 Neb. 226, 334 N.W.2d 168 (1983).

Where plaintiff did not file a security agreement or lien and did not simultaneously have legal title and physical possession as required by section 60-105, R.R.S.1943, it did not meet its burden of proof for a replevin action. *The Cornhusker Bank of Omaha v. McNamara*, 205 Neb. 504, 288 N.W.2d 287 (1980).

For there to be delivery of an executed certificate of title to a motor vehicle, there must be an intent on the part of the grantor that the instrument operate as a monument of title to take effect presently and an acceptance of the instrument by the grantee with the intent to take title. *Weiss v. Union Ins. Co.*, 202 Neb. 469, 276 N.W.2d 88 (1979).

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Under the Nebraska Certificate of Title Act, a certificate of title is the exclusive method provided by statute for the transfer of title to an automobile, but it is not conclusive of ownership. *First Nat. Bank & Trust Co. v. Ohio Cas. Ins. Co.*, 196 Neb. 595, 244 N.W.2d 209 (1976).

An agreement which fully complied with the provisions of section 60-1417, R.S.Supp.,1967, constituted a valid agreement of sale and excluded insurance coverage of transferor of automobile. *Dyas v. Morris*, 194 Neb. 773, 235 N.W.2d 636 (1975).

Where mortgagee failed to have lien noted upon certificate of title, it was not entitled to recover against innocent purchaser of automobile. *First Nat. Bank v. Provident Finance Co.*, 176 Neb. 45, 125 N.W.2d 78 (1963).

Liability of county clerk for erroneously issuing a certificate of title is for a failure to exercise due diligence. *Burns v. Commonwealth Trailer Sales*, 163 Neb. 308, 79 N.W.2d 563 (1956).

Dealer is required to have chattel mortgage noted on certificate of title. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

A provision in an automobile liability insurance policy providing automatic insurance on a newly acquired automobile is effective from the date of acquisition of the newly acquired automobile notwithstanding the existence of infirmities in the title thereto. *Blixt v. Home Mutual Ins. Co.*, 145 Neb. 717, 18 N.W.2d 78 (1945).

## 60-141 Dealer; inventory; certificates required; when.

A dealer need not apply for certificates of title for any vehicles in stock or acquired for stock purposes, but upon transfer of such vehicle in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on such vehicle or an assignment of a manufacturer's or importer's certificate. If all reassignments on the manufacturer's or importer's certificate have been used, the dealer may attach a dealer assignment form prescribed by the department prior to any subsequent transfer. If all reassign-

ments on the dealer assignment form or the certificate of title have been used, the dealer shall obtain title in the dealer's name prior to any subsequent transfer. No dealer shall execute a reassignment on or transfer ownership by way of a manufacturer's statement of origin unless the dealer is franchised by the manufacturer of the vehicle.

**Source:** Laws 2005, LB 276, § 41; Laws 2008, LB 756, § 2.

Purchasers, other than dealers, must acquire certificate of title. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

Concluding proviso does not exempt dealer from having mortgage lien noted on certificate of title. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

A motor vehicle mortgage lien, not shown on certificate of title, is not valid against subsequent holder of mortgage lien shown on the certificate. *Securities Credit Corp. v. Pindell*, 153 Neb. 298, 44 N.W.2d 501 (1950).

**60-142 Historical vehicle or parts vehicle; sale or transfer; parts vehicle; bill of sale; prohibited act; violation; penalty.**

(1) The sale or trade and subsequent legal transfer of ownership of a historical vehicle or parts vehicle shall not be contingent upon any condition that would require the historical vehicle or parts vehicle to be in operating condition at the time of the sale or transfer of ownership.

(2) No owner of a parts vehicle shall sell or otherwise dispose of the parts vehicle without delivering to the purchaser a bill of sale for the parts vehicle prescribed by the department. The bill of sale may include, but shall not be limited to, the vehicle identification number, the year, make, and model of the vehicle, the name and residential and mailing addresses of the owner and purchaser, the acquisition date, and the odometer statement provided for in section 60-192. A person who uses a bill of sale for a parts vehicle to transfer ownership of any vehicle that does not meet the definition of a parts vehicle shall be guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 276, § 42; Laws 2006, LB 663, § 5; Laws 2011, LB 241, § 4.

**60-142.01 Vehicle manufactured prior to 1940; transfer of title; salvage title; requirements.**

(1) If the owner does not have a certificate of title for a vehicle which was manufactured prior to 1940 and which has not had any major component part replaced, the department shall search its records for evidence of issuance of a Nebraska certificate of title for such vehicle at the request of the owner. If no certificate of title has been issued for such vehicle in the thirty-year period prior to application, the owner may transfer title to the vehicle by giving the transferee a notarized bill of sale, an affidavit in support of the application for title, a statement that an inspection has been conducted on the vehicle, and a statement from the department that no certificate of title has been issued for such vehicle in the thirty-year period prior to application. The transferee may apply for a certificate of title pursuant to section 60-149 by presenting the documentation described in this section in lieu of a certificate of title.

(2) If the owner has a certificate of title for a vehicle which was previously classified as junked, which was manufactured prior to 1940, and which has not had any major component part replaced, the director, in his or her discretion, may issue a salvage title if it is shown to his or her satisfaction that the vehicle

has been inspected and the vehicle has been restored to its original specifications.

**Source:** Laws 2006, LB 663, § 6; Laws 2020, LB944, § 7.

**60-142.02 Application for certificate of title indicating year, make, and model originally designated by manufacturer; procedure.**

If the owner does not have a certificate of title for a vehicle manufactured more than thirty years prior to application for a certificate of title and one or more major component parts have been replaced with one or more replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of the vehicle, the owner may apply for a certificate of title indicating that the year, make, and model of the vehicle is that originally designated by the manufacturer by presenting a notarized bill of sale for each major component part replaced, an affidavit in support of the application for title, a statement that an inspection has been conducted on the vehicle, a statement from a car club representative pursuant to section 60-142.03, and a vehicle identification number as described in section 60-148.

**Source:** Laws 2006, LB 663, § 7.

**60-142.03 Recognized car club; qualified car club representative; department; powers and duties.**

(1) For purposes of this section, car club means an organization that has members with knowledge of and expertise pertaining to authentic vehicles and that has members with knowledge of and expertise pertaining to the restoration and preservation of specific makes and models of vehicles using replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for a specific year, make, and model of vehicle.

(2) To become a recognized car club, a car club shall apply to the department. For a car club to become recognized, it must be a nonprofit organization with established bylaws and at least twenty members. The applicant shall provide a copy of the bylaws and a membership list to the department. The department shall determine if a car club qualifies as a recognized car club. The determination of the department shall be final and nonappealable.

(3) A member of a recognized car club may apply to the department to become a qualified car club representative. Each qualified car club representative shall be designated by the president or director of the local chapter of the recognized car club of which he or she is a member. The department shall identify and maintain a list of qualified car club representatives. A qualified car club representative may apply to be placed on the list of qualified car club representatives by providing the department with his or her name, address, and telephone number, the name, address, and telephone number of the recognized car club he or she represents, a copy of the designation of the representative by the president or director of the local chapter of the recognized car club, and such other information as may be required by the department. The department may place a qualified car club representative on the list upon receipt of a completed application and may provide each representative with information for inspection of vehicles and parts. The determination of the department regarding designation of an individual as a qualified car club representative



and placement on the list of qualified car club representatives shall be final and nonappealable. The department shall distribute the list to county treasurers.

(4) When a qualified car club representative inspects vehicles and replacement parts, he or she shall determine whether all major component parts used in the assembly of a vehicle are original or essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, including the appropriate engine, body material, body shape, and other requirements as prescribed by the department. After such inspection, the representative shall provide the owner with a statement in the form prescribed by the department which includes the findings of the inspection. No qualified car club representative shall charge any fee for the inspection or the statement. No qualified car club representative shall provide a statement for any vehicle owned by such representative or any member of his or her immediate family.

(5) The director may summarily remove a person from the list of qualified car club representatives upon written notice. Such person may reapply for inclusion on the list upon presentation of suitable evidence satisfying the director that the cause for removal from the list has been corrected, eliminated, no longer exists, or will not affect or interfere with the person's judgment or qualifications for inspection of vehicles to determine whether or not any replacement parts are essentially the same in design and material to that originally supplied by the original manufacturer for the specific year, make, and model of vehicle.

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

**Source:** Laws 2006, LB 663, § 8; Laws 2012, LB801, § 28.

**60-142.04 Reconstructed vehicle; application for certificate of title; procedure.**

The owner of a vehicle which was manufactured or assembled more than thirty years prior to application for a certificate of title with one or more major component parts replaced by replacement parts, other than replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, may apply for a certificate of title by presenting a certificate of title for one major component part, a notarized bill of sale for all other major component parts replaced, a statement that an inspection has been conducted on the vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year the vehicle resembles, the make the vehicle resembles, and the model the vehicle resembles and shall be branded as reconstructed.

**Source:** Laws 2006, LB 663, § 9; Laws 2018, LB909, § 20.

**60-142.05 Replica vehicle; application for certificate of title; procedure.**

The owner of a kit vehicle may apply for a certificate of title by presenting a manufacturer's statement of origin for the kit, a notarized bill of sale for all major component parts not in the kit, a statement that an inspection has been conducted on the vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year the vehicle

resembles, the make the vehicle resembles, and the model the vehicle resembles and shall be branded as replica.

**Source:** Laws 2006, LB 663, § 10; Laws 2018, LB909, § 21.

**60-142.06 Certificate of title as assembled vehicle; application for certificate of title indicating year, make, and model; procedure.**

An owner of a vehicle which has been issued a certificate of title as an assembled vehicle prior to April 12, 2018, in this state may have the vehicle inspected by a qualified car club representative who shall determine whether or not any modifications or replacement parts are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle and obtain a statement as provided in section 60-142.03. The owner may apply for a certificate of title indicating the year, make, and model of the vehicle by presenting the statement and an application for certificate of title to the department. After review of the application, the department shall issue the certificate of title to the owner if the vehicle meets the specifications provided in section 60-142.02.

**Source:** Laws 2006, LB 663, § 11; Laws 2018, LB909, § 22.

**60-142.07 Minitruck; application for certificate of title; contents of certificate.**

If a minitruck does not have a manufacturer's vehicle identification number, the owner of the minitruck may apply for a certificate of title by presenting (1)(a) a manufacturer's statement of origin for the minitruck or (b)(i) a bill of sale or a manufacturer's or importer's certificate for a minitruck purchased before January 1, 2011, or a manufacturer's or importer's certificate for a minitruck purchased on or after January 1, 2011, and (ii) an affidavit by the owner affirming ownership for the minitruck, (2) a statement that an inspection has been conducted on the minitruck, and (3) a vehicle identification number as described in section 60-148. The certificate of title shall indicate the make and model year of the minitruck. If the model year cannot be determined, the model year of the minitruck shall be the year application for title was made.

**Source:** Laws 2010, LB650, § 10.

**60-142.08 Low-speed vehicle; application for certificate of title indicating year and make; procedure.**

If a low-speed vehicle does not have a manufacturer's vehicle identification number, the owner of the low-speed vehicle may apply for a certificate of title by presenting a manufacturer's statement of origin for the low-speed vehicle, a statement that an inspection has been conducted on the low-speed vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the low-speed vehicle as the year application for title was made and the make of the low-speed vehicle.

**Source:** Laws 2011, LB289, § 10.

**60-142.09 Vehicle manufactured more than thirty years prior to application for certificate of title; department; duties.**

If the owner does not have a certificate of title for a vehicle manufactured more than thirty years prior to application for a certificate of title which has

not had any major component part replaced, the department shall search its records and any records readily accessible to the department for evidence of issuance of a certificate of title for such vehicle at the request of the owner. If no certificate of title has been issued, the owner may apply for a certificate of title indicating that the year, make, and model of the vehicle is that originally designated by the manufacturer by presenting a notarized bill of sale, an affidavit in support of the application for title, and a statement that an inspection has been conducted on the vehicle.

**Source:** Laws 2017, LB263, § 10.

**60-142.10 Vehicle manufactured more than thirty years prior to application for certificate of title; fee.**

For each certificate of title issued by the department under section 60-142.09, the fee shall be twenty-five dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2017, LB263, § 11.

**60-142.11 Assembled vehicle; application for certificate of title; procedure.**

The owner of an assembled vehicle may apply for a certificate of title by presenting a certificate of title for one major component part, a notarized bill of sale for all other major component parts replaced, a statement that an inspection has been conducted on the vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the vehicle as the year application for title was made and the make of the vehicle as assembled.

**Source:** Laws 2018, LB909, § 23.

**60-142.12 Former military vehicle; application for certificate of title; procedure.**

The owner of a former military vehicle may apply for a certificate of title by presenting (1) a manufacturer's certificate of origin, (2) a certificate of title from another state, (3) a court order issued by a court of record, (4) an assigned registration certificate, if the law of the state from which the vehicle was brought into this state does not require a certificate of title, (5) a United States Government Certificate to Obtain Title to a Vehicle, or (6) evidence of ownership as provided for in section 30-24,125, sections 52-601.01 to 52-605, sections 60-1901 to 60-1911, or sections 60-2401 to 60-2411, or documentation of compliance with section 76-1607.

**Source:** Laws 2019, LB156, § 4.

**60-143 Vehicle with modification or deviation from original specifications; how treated.**

An owner of a vehicle with a modification or deviation from the original specifications may be permitted to apply for a certificate of title under sections 60-142.01 to 60-142.03 if such modification or deviation is of historic nature and essentially the same in design and material to that originally supplied by the manufacturer for vehicles of that era or if the modification or deviation could be considered to be in the category of safety features. Safety-related modifications include hydraulic brakes, sealed-beam headlights, and occupant

protection systems as defined in section 60-6,265. A modification or deviation involving accessories shall be limited to those accessories available in the era to which the vehicle belongs.

**Source:** Laws 2005, LB 276, § 43; Laws 2006, LB 663, § 12.

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

(1)(a)(i) Except as provided in subdivisions (b), (c), and (d) of this subsection, the county treasurer shall be responsible for issuing and filing certificates of title for vehicles, and each county shall issue and file such certificates of title using the Vehicle Title and Registration System which shall be provided and maintained by the department. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(ii) This subdivision applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2021. In addition to the information required under subdivision (1)(a)(i) of this section, the application for a certificate of title shall contain (A)(I) the full legal name as defined in section 60-468.01 of each owner or (II) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (B)(I) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (II) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

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

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

(d) The department shall issue certificates of title pursuant to subsection (2) of section 60-142.01 and section 60-142.06. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(e) The department shall issue certificates of title pursuant to section 60-142.09. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

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

(3)(a) If a vehicle has situs in Nebraska, the application for a certificate of title may be filed with the county treasurer of any county.

(b) If a motor vehicle dealer licensed under the Motor Vehicle Industry Regulation Act applies for a certificate of title for a vehicle, the application may be filed with the county treasurer of any county.

(c) An approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 may apply for a certificate of title for a vehicle to the county treasurer of any county or the department in a manner provided by the electronic dealer services system.

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

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

(6) All applicants registering a vehicle pursuant to section 60-3,198 shall file the application for a certificate of title with the Division of Motor Carrier Services of the department. The division shall deliver the certificate to the applicant if there are no liens on the vehicle. If there are one or more liens on the vehicle, the certificate of title shall be handled as provided in section 60-164. All certificates of title issued by the division shall be issued in the manner prescribed for the county treasurer in section 60-152.

**Source:** Laws 2005, LB 276, § 44; Laws 2006, LB 663, § 13; Laws 2006, LB 765, § 3; Laws 2009, LB202, § 12; Laws 2010, LB650, § 11; Laws 2010, LB816, § 4; Laws 2011, LB212, § 2; Laws 2012, LB801, § 29; Laws 2015, LB642, § 3; Laws 2017, LB263, § 13; Laws 2019, LB270, § 7; Laws 2020, LB944, § 8.

#### Cross References

**Motor Vehicle Industry Regulation Act**, see section 60-1401.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Under the Nebraska Certificate of Title Act, a certificate of title is the exclusive method provided by statute for the transfer of title to an automobile, but it is not conclusive of ownership. *First Nat. Bank & Trust Co. v. Ohio Cas. Ins. Co.*, 196 Neb. 595, 244 N.W.2d 209 (1976).

In the absence of even an assignment of certificate of title, title to motor vehicle remained in person named in certificate of title. *Turpin v. Standard Reliance Ins. Co.*, 169 Neb. 233, 99 N.W.2d 26 (1959).

If applicant is a nonresident, application for certificate must be filed in county in which transaction is consummated. *Universal C.I.T. Credit Corp. v. Vogt*, 165 Neb. 611, 86 N.W.2d 771 (1957).

Legislature contemplated that form provided must be fully and properly executed. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

#### **60-145 Motor vehicle used as taxi or limousine; disclosure on face of certificate of title required.**

For any motor vehicle which is to be used as a taxi or limousine, the application and the certificate of title shall show on the face thereof that such vehicle is being used or has been used as a taxi or limousine and such subsequent certificates of title shall show the same information.

**Source:** Laws 2005, LB 276, § 45; Laws 2007, LB286, § 10.

#### **60-146 Application; identification inspection required; exceptions; form; procedure; additional inspection authorized; agreement with motor vehicle dealer; county sheriff; duties.**

(1) An application for a certificate of title for a vehicle shall include a statement that an identification inspection has been conducted on the vehicle unless (a) the title sought is a salvage branded certificate of title or a nontransferable certificate of title, (b) the surrendered ownership document is a Nebraska certificate of title, a manufacturer's statement of origin, an importer's statement of origin, a United States Government Certificate of Release of a vehicle, or a nontransferable certificate of title, (c) the application contains a

statement that the vehicle is to be registered under section 60-3,198, (d) the vehicle is a cabin trailer, (e) the title sought is the first title for the vehicle sold directly by the manufacturer of the vehicle to a dealer franchised by the manufacturer, or (f) the vehicle was sold at an auction authorized by the manufacturer and purchased by a dealer franchised by the manufacturer of the vehicle.

(2) The department shall prescribe a form to be executed by a dealer and submitted with an application for a certificate of title for vehicles exempt from inspection pursuant to subdivision (1)(e) or (f) of this section. The form shall clearly identify the vehicle and state under penalty of law that the vehicle is exempt from inspection.

(3) The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-183, shall be in a format as determined by the department, and shall expire ninety days after the date of the inspection. The county treasurer shall accept a certificate of inspection, approved by the superintendent, from an officer of a state police agency of another state unless an inspection is required under section 60-174.

(4)(a) Except as provided in subdivision (b) of this subsection, the identification inspection shall include examination and notation of the then current odometer reading, if any, and a comparison of the vehicle identification number with the number listed on the ownership records, except that if a lien is registered against a vehicle and recorded on the vehicle's ownership records, the county treasurer shall provide a copy of the ownership records for use in making such comparison. If such numbers are not identical, if there is reason to believe further inspection is necessary, or if the inspection is for a Nebraska assigned number, the person performing the inspection shall make a further inspection of the vehicle which may include, but shall not be limited to, examination of other identifying numbers placed on the vehicle by the manufacturer and an inquiry into the numbering system used by the state issuing such ownership records to determine ownership of a vehicle. The identification inspection shall also include a statement that the vehicle identification number has been checked for entry in the National Crime Information Center and the Nebraska Crime Information Service. In the case of an assembled vehicle, a vehicle designated as reconstructed, or a vehicle designated as replica, the identification inspection shall include, but not be limited to, an examination of the records showing the date of receipt and source of each major component part. No identification inspection shall be conducted unless all major component parts are properly attached to the vehicle in the correct location.

(b) Each county sheriff shall establish a process to enter into an agreement with any motor vehicle dealer as defined in section 60-1401.26 with an established place of business as defined in section 60-1401.15 in the county in which the sheriff has jurisdiction to collect information for the identification inspection on motor vehicles sold by the motor vehicle dealer. Such information shall be collected at the time of sale on each motor vehicle sold from the inventory of the motor vehicle dealer at the dealer's established place of business in such county. The agreement shall require that the motor vehicle dealer provide the required fee, a copy of the documents evidencing transfer of ownership, and the make, model, vehicle identification number, and odometer reading in a form and manner prescribed by the county sheriff, which shall include a requirement to provide one or more photographs or digital images of

the vehicle, the vehicle identification number, and the odometer reading. The county sheriff shall complete the identification inspection as required under subdivision (a) of this subsection using such information and return to the motor vehicle dealer the statement that an identification inspection has been conducted for each motor vehicle as provided in subsection (3) of this section. If the information is incomplete or if there is reason to believe that further inspection is necessary, the county sheriff shall inform the motor vehicle dealer. If the motor vehicle dealer knowingly provides inaccurate or false information, the motor vehicle dealer shall be liable for any damages that result from the provision of such information. The motor vehicle dealer shall keep the records for five years after the date the identification inspection is complete.

(5) If there is cause to believe that odometer fraud exists, written notification shall be given to the office of the Attorney General. If after such inspection the sheriff or his or her designee determines that the vehicle is not the vehicle described by the ownership records, no statement shall be issued.

(6) The county treasurer or the department may also request an identification inspection of a vehicle to determine if it meets the definition of motor vehicle as defined in section 60-123.

**Source:** Laws 2005, LB 276, § 46; Laws 2006, LB 765, § 4; Laws 2007, LB286, § 11; Laws 2012, LB801, § 30; Laws 2018, LB909, § 24; Laws 2019, LB80, § 1; Laws 2021, LB343, § 1.  
Effective date August 28, 2021.

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

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

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

**Source:** Laws 2005, LB 276, § 47; Laws 2007, LB166, § 1; Laws 2007, LB334, § 9; Laws 2009, LB202, § 13; Laws 2012, LB801, § 31.

**60-148 Assignment of distinguishing identification number; when.**

(1) Whenever a person applies for a certificate of title for a vehicle, the department shall assign a distinguishing identification number to the vehicle if the vehicle identification number is destroyed, obliterated, or missing. The owner of such a vehicle to which such number is assigned shall have such number affixed to such vehicle as provided in subsection (2) of this section and sign an affidavit on a form prepared by the department that such number has been attached. Before the certificate of title for an assigned number is released to the applicant by the county treasurer, the applicant shall also provide a statement that an inspection has been conducted.

(2) The department shall develop a metallic assigned vehicle identification number plate which can be permanently secured to a vehicle by rivets or a permanent sticker or other form of marking or identifying the vehicle with the distinguishing identification number as determined by the director. All distinguishing identification numbers shall contain seventeen characters in conformance with national standards. When the manufacturer's vehicle identification number is known, it shall be used by the department as the assigned number. In the case of an assembled all-terrain vehicle, a utility-type vehicle, a minibike, an assembled vehicle, a vehicle designated as reconstructed, or a vehicle designated as replica, the department shall use a distinguishing identification number. The department shall, upon application by an owner, provide the owner with a number plate or a permanent sticker or other form of marking or identification displaying a distinguishing identification number or the manufacturer's number.

(3) Any vehicle to which a distinguishing identification number is assigned shall be titled under such distinguishing identification number when titling of the vehicle is required under the Motor Vehicle Certificate of Title Act.

**Source:** Laws 2005, LB 276, § 48; Laws 2006, LB 663, § 14; Laws 2010, LB650, § 12; Laws 2012, LB801, § 32; Laws 2018, LB909, § 25.

**60-149 Application; documentation required.**

(1)(a) If a certificate of title has previously been issued for a vehicle in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned except as otherwise provided in the Motor Vehicle Certificate of Title Act.

(b) Except for manufactured homes or mobile homes as provided in subsection (2) of this section, if a certificate of title has not previously been issued for the vehicle in this state or if a certificate of title is unavailable, the application shall be accompanied by:

(i) A manufacturer's or importer's certificate except as otherwise provided in subdivision (viii) of this subdivision;

(ii) A duly certified copy of the manufacturer's or importer's certificate;

(iii) An affidavit by the owner affirming ownership in the case of an all-terrain vehicle, a utility-type vehicle, or a minibike;

(iv) A certificate of title from another state;

(v) A court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the law of the state from which the vehicle was brought into this state does not have a certificate of title law;



(vi) Evidence of ownership as provided for in section 30-24,125, sections 52-601.01 to 52-605, sections 60-1901 to 60-1911, or sections 60-2401 to 60-2411;

(vii) Documentation prescribed in section 60-142.01, 60-142.02, 60-142.04, 60-142.05, 60-142.09, or 60-142.11 or documentation of compliance with section 76-1607;

(viii) A manufacturer's or importer's certificate and an affidavit by the owner affirming ownership in the case of a minitruck; or

(ix) In the case of a motor vehicle, a trailer, an all-terrain vehicle, a utility-type vehicle, or a minibike, an affidavit by the holder of a motor vehicle auction dealer's license as described in subdivision (11) of section 60-1406 affirming that the certificate of title is unavailable and that the vehicle (A) is a salvage vehicle through payment of a total loss settlement, (B) is a salvage vehicle purchased by the auction dealer, or (C) has been donated to an organization operating under section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01.

(c) If the application for a certificate of title in this state is accompanied by a valid certificate of title issued by another state which meets that state's requirements for transfer of ownership, then the application may be accepted by this state.

(d) If a certificate of title has not previously been issued for the vehicle in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 60-167.

(2)(a) If the application for a certificate of title for a manufactured home or a mobile home is being made in accordance with subdivision (4)(b) of section 60-137 or if the certificate of title for a manufactured home or a mobile home is unavailable, the application shall be accompanied by proof of ownership in the form of:

(i) A duly assigned manufacturer's or importer's certificate;

(ii) A certificate of title from another state;

(iii) A court order issued by a court of record;

(iv) Evidence of ownership as provided for in section 30-24,125, sections 52-601.01 to 52-605, sections 60-1901 to 60-1911, or sections 60-2401 to 60-2411, or documentation of compliance with section 76-1607; or

(v) Assessment records for the manufactured home or mobile home from the county assessor and an affidavit by the owner affirming ownership.

(b) If the applicant cannot produce proof of ownership described in subdivision (a) of this subsection, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county treasurer to issue a certificate of title, as the case may be.

(3) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. Only a salvage branded certificate of title shall be issued to any vehicle conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle.

(4) The county treasurer shall retain the evidence of title presented by the applicant and on which the certificate of title is issued.

(5)(a) If an affidavit is submitted under subdivision (1)(b)(ix) of this section, the holder of a motor vehicle auction dealer’s license shall certify that (i) it has made at least two written attempts and has been unable to obtain the properly endorsed certificate of title to the property noted in the affidavit from the owner and (ii) thirty days have expired after the mailing of a written notice regarding the intended disposition of the property noted in the affidavit by certified mail, return receipt requested, to the last-known address of the owner and to any lien or security interest holder of record of the property noted in the affidavit.

(b) The notice under subdivision (5)(a)(ii) of this section shall contain a description of the property noted in the affidavit and a statement that title to the property noted in the affidavit shall vest in the holder of the motor vehicle auction dealer’s license thirty days after the date such notice was mailed.

(c) The mailing of notice and the expiration of thirty days under subdivision (5)(a)(ii) of this section shall extinguish any lien or security interest of a lienholder or security interest holder in the property noted in the affidavit, unless the lienholder or security interest holder has claimed such property within such thirty-day period. The holder of a motor vehicle auction dealer’s license shall transfer possession of the property noted in the affidavit to the lienholder or security interest holder claiming such property.

**Source:** Laws 2005, LB 276, § 49; Laws 2006, LB 663, § 15; Laws 2010, LB650, § 13; Laws 2010, LB933, § 1; Laws 2012, LB801, § 33; Laws 2017, LB263, § 14; Laws 2017, LB492, § 12; Laws 2018, LB275, § 1; Laws 2018, LB909, § 26; Laws 2019, LB270, § 8.

Certificate of title, based upon a duplicate issued in another state, is not protected. Allstate Ins. Co. v. Enzolera, 164 Neb. 38, 81 N.W.2d 588 (1957).

**60-150 Application; county treasurer; duties.**

The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records available. If he or she is satisfied that the applicant is the owner of such vehicle and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with the appropriate seal.

**Source:** Laws 2005, LB 276, § 50; Laws 2012, LB801, § 34.

Duty of county clerk is to use due diligence in ascertaining whether or not the facts stated in the application are true. Burns v. Commonwealth Trailer Sales, 163 Neb. 308, 79 N.W.2d 563 (1956).

**60-151 Certificate of title obtained in name of purchaser; exceptions.**

(1) The certificate of title for a vehicle shall be obtained in the name of the purchaser upon application signed by the purchaser, except that (a) for titles to be held by a married couple, applications may be accepted upon the signature of either spouse as a signature for himself or herself and as agent for his or her spouse and (b) for an applicant providing proof that he or she is a handicapped or disabled person as defined in section 60-331.02, applications may be accepted upon the signature of the applicant’s parent, legal guardian, foster parent, or agent.

(2) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2021. If the purchaser of a vehicle does not obtain a certificate of title in accordance with subsection (1) of this section within thirty days after the sale of the vehicle, the seller of such vehicle may request the department to update the electronic certificate of title record. The department shall update such record upon receiving evidence of a sale satisfactory to the director.

**Source:** Laws 2005, LB 276, § 51; Laws 2011, LB163, § 14; Laws 2019, LB111, § 2; Laws 2019, LB270, § 9.

**60-152 Certificate of title; issuance; delivery of copies; seal; county treasurer; duties.**

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

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

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

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

**Source:** Laws 2005, LB 276, § 52; Laws 2007, LB286, § 12; Laws 2009, LB202, § 14; Laws 2012, LB801, § 35.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Legislature contemplated that form provided must be fully and properly executed. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

**60-153 Certificate of title; form; contents; secure power-of-attorney form.**

(1) A certificate of title shall be printed upon safety security paper to be selected by the department. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to,

county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and residential and mailing address of the owner, acquisition date, issuing county treasurer's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. A certificate of title issued on or after September 1, 2007, shall include the words "void if altered". A certificate of title that is altered shall be deemed a mutilated certificate of title. The certificate of title of an all-terrain vehicle, utility-type vehicle, or minibike shall include the words "not to be registered for road use".

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 60-331.02.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

(5) A certificate of title for a former military vehicle shall include the words "former military vehicle".

**Source:** Laws 2005, LB 276, § 53; Laws 2007, LB286, § 13; Laws 2010, LB650, § 14; Laws 2011, LB163, § 15; Laws 2012, LB801, § 36; Laws 2019, LB156, § 5.

Execution of a certificate of title is the exclusive method of conveying ownership of a motor vehicle, but the certificate is not in itself conclusive evidence of ownership. *Weiss v. Union Ins. Co.*, 202 Neb. 469, 276 N.W.2d 88 (1979).

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Certificate of title may be issued upon a manufacturer's certificate. *Turpin v. Standard Reliance Ins. Co.*, 169 Neb. 233, 99 N.W.2d 26 (1959).

Application for certificate of title conformed to requirements of this section. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

Assignment of certificate of title must be sworn to in order to be valid. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

Form of certificate of title to motor vehicle prescribed by this section provides headings and space for the notation of liens thereon. *Securities Credit Corp. v. Pindell*, 153 Neb. 298, 44 N.W.2d 501 (1950).

### 60-154 Fees.

(1)(a) For each original certificate of title issued by a county for a motor vehicle or trailer, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State

Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; forty-five cents to the Nebraska State Patrol Cash Fund; and ten cents to the Nebraska Motor Vehicle Industry Licensing Fund.

(b) For each original certificate of title issued by a county for an all-terrain vehicle, a utility-type vehicle, or a minibike, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; and fifty-five cents to the Nebraska State Patrol Cash Fund.

(2) For each original certificate of title issued by the department for a vehicle except as provided in section 60-159.01, the fee shall be ten dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Six dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

(3) An approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 may collect the fees prescribed by this section and shall remit any such fees to the appropriate county treasurer or the department.

**Source:** Laws 2005, LB 276, § 54; Laws 2006, LB 663, § 16; Laws 2006, LB 1061, § 7; Laws 2010, LB650, § 15; Laws 2012, LB751, § 7; Laws 2017, LB263, § 15.

**60-154.01 Motor Vehicle Fraud Cash Fund; created; use; investment.**

The Motor Vehicle Fraud Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of revenue credited pursuant to section 60-154. The fund shall only be used by the Department of Justice for expenses incurred and related to (1) the investigation and prosecution of odometer and motor vehicle fraud and motor vehicle licensing violations which may be referred by the Nebraska Motor Vehicle Industry Licensing Board and (2) the investigation and prosecution of fraud relating to and theft of all-terrain vehicles, utility-type vehicles, and minibikes. Expenditures from the fund shall be approved by the Attorney General as authorized by law. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2006, LB 1061, § 8; Laws 2010, LB650, § 16.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**60-155 Notation of lien; fees.**

(1) For each notation of a lien by a county, the fee shall be seven dollars. Two dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. One dollar shall be remitted to the State Treasurer for credit to the General Fund.

(2) For each notation of a lien by the department, the fee shall be seven dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Three dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

(3) An approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 may collect the fees prescribed by this section and shall remit any such fees to the appropriate county treasurer or the department.

**Source:** Laws 2005, LB 276, § 55; Laws 2013, LB30, § 1; Laws 2017, LB263, § 16.

**60-156 Duplicate certificate of title; fees.**

(1) For each duplicate certificate of title issued by a county for a vehicle, the fee shall be fourteen dollars. Ten dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2) For each duplicate certificate of title issued by the department for a vehicle, the fee shall be fourteen dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Ten dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

**Source:** Laws 2005, LB 276, § 56; Laws 2013, LB30, § 2.

**60-157 Repealed. Laws 2007, LB 286, § 57.**

**60-158 Identification inspection; fees.**

(1) For each identification inspection conducted by the patrol, the fee shall be ten dollars, which shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(2) For each identification inspection conducted by a county sheriff, the fee shall be ten dollars, which shall be paid to the county treasurer and credited to the county sheriff's vehicle inspection account within the county general fund.

**Source:** Laws 2005, LB 276, § 58.

**60-159 Application for vehicle identification number or distinguishing identification number; fee.**

For each application for a metallic assigned vehicle identification number plate or other form of marking or identification under section 60-148, the fee shall be twenty dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 276, § 59; Laws 2006, LB 663, § 17.

**60-159.01 New title of vehicle previously issued title as assembled vehicle; fee.**

For each certificate of title issued by the department under section 60-142.06, the fee shall be twenty-five dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2006, LB 663, § 18.

**60-160 Bonded certificate of title; fee.**

For each bonded certificate of title issued for a vehicle, the fee shall be fifty dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 276, § 60.

**60-161 County treasurer; remit funds; when.**

The county treasurer shall remit all funds due the State Treasurer under sections 60-154 to 60-160 monthly and not later than the twentieth day of the month following collection. The county treasurer shall credit the fees not due the State Treasurer to the county general fund.

**Source:** Laws 2005, LB 276, § 61; Laws 2011, LB135, § 2; Laws 2012, LB801, § 37; Laws 2017, LB263, § 17.

**60-162 Department; powers; rules and regulations.**

(1) The department may adopt and promulgate rules and regulations to insure uniform and orderly operation of the Motor Vehicle Certificate of Title Act, and the county treasurer of each county shall conform to such rules and regulations and proceed at the direction of the department. The department shall also provide the county treasurers with the necessary training for the proper administration of the act.

(2) The department shall receive all instruments relating to vehicles forwarded to it by the county treasurers under the act and shall maintain indices covering the state at large for the instruments so received. These indices shall be by motor number or by an identification number and alphabetically by the owner's name and shall be for the state at large and not for individual counties.

(3) The department shall provide and furnish the forms required by the act, except manufacturers' or importers' certificates.

(4) The county treasurer shall keep on hand a sufficient supply of blank forms which, except certificate of title forms, shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county.

**Source:** Laws 2005, LB 276, § 62; Laws 2012, LB801, § 38.

**60-162.01 Repealed. Laws 2012, LB 801, § 102.****60-163 Department; cancellation of certificate of title; procedure.**

(1) The department shall check with its records all duplicate certificates of title received from a county treasurer. If it appears that a certificate of title has been improperly issued, the department shall cancel the same. Upon cancellation of any certificate of title, the department shall notify the county treasurer who issued the same, and such county treasurer shall thereupon enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return the same to the department forthwith.

(2) If a certificate of registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel the same and demand the return of such certificate of registration and license plates or tags, and the holder of such certificate of registration and license plates or tags shall return the same to the department forthwith.

**Source:** Laws 2005, LB 276, § 63; Laws 2012, LB801, § 39.

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

(1) The department shall implement an electronic title and lien system for vehicles. The holder of a security interest, trust receipt, conditional sales contract, or similar instrument regarding a vehicle, or beginning on the implementation date determined by the director pursuant to subsection (7) of section 60-1507, a licensed dealer, may file a lien electronically as prescribed by the department. Upon receipt of an application for a certificate of title for a vehicle, any lien filed electronically shall become part of the electronic certificate of title record created by the county treasurer or department maintained on the electronic title and lien system. If an application for a certificate of title indicates that there is a lien or encumbrance on a vehicle or if a lien or notice of lien has been filed electronically, the department shall retain an electronic certificate of title record and shall note and cancel such liens electronically on the system. The department shall provide access to the electronic certificate of title records for licensed dealers and lienholders who participate in the system by a method determined by the director.

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



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

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

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

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

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

(7) Upon receipt of a subsequent lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments or a notice of

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

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

**Source:** Laws 2005, LB 276, § 64; Laws 2007, LB286, § 14; Laws 2008, LB756, § 3; Laws 2008, LB953, § 3; Laws 2009, LB202, § 15; Laws 2010, LB650, § 17; Laws 2010, LB816, § 5; Laws 2012, LB801, § 40; Laws 2017, LB263, § 18; Laws 2018, LB909, § 27.

#### Cross References

**Motor Vehicle Industry Regulation Act**, see section 60-1401.

1. Priority of liens
2. Notation of lien on certificate
3. Miscellaneous

#### 1. Priority of liens

If procedure of this section followed, lienor's interest shall take priority and marshalling of assets cannot be required.

Platte Valley Bank of North Bend v. Kracl, 185 Neb. 168, 174 N.W.2d 724 (1970).

Conditional sales contract shown on certificate of title is superior to artisan's lien. *Allied Inv. Co. v. Shaneyfelt*, 161 Neb. 840, 74 N.W.2d 723 (1956).

Attorney who paid off balance taxpayer owed on purchase of automobile and took taxpayer's equity as payment for prior legal fee was subrogated to amount of encumbrance discharged, and, as to such, attorney, whose interest in vehicle was otherwise junior to federal tax lien, was entitled to priority over the government. *Gallup v. United States*, 358 F.Supp. 776 (D. Neb. 1973).

## 2. Notation of lien on certificate

A manufactured home is within the scope of this section as a class of "cabin trailer" pursuant to section 60-614. Therefore, a manufactured home is considered to be a motor vehicle for purposes of this section, and a security interest is perfected when such interest is listed on a certificate of title to the manufactured home. A fixture filing is not needed to perfect a security interest in a manufactured home. *Green Tree Fin. Servicing v. Sutton*, 264 Neb. 533, 650 N.W.2d 228 (2002).

Claims of a purchase money mortgage, a conditional interest established by an agreement, and other security interests not shown on the certificate of title are invalid as to subsequent purchasers under the express terms of the certificate of title act. *Nelson v. Cool*, 230 Neb. 859, 434 N.W.2d 32 (1989).

The practice of filing and recording chattel mortgage on motor vehicles has been eliminated and under that section security interests must be noted on the certificate of title itself. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of*

*Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

A security interest noted on the certificate of title to a vehicle is valid against creditors of the debtor whether armed with process or not. *White Motor Credit Corp. v. Sapp Bros. Truck Plaza, Inc.*, 197 Neb. 421, 249 N.W.2d 489 (1977).

An unrecorded lien is invalid as to a subsequent purchaser or lienholder. *First Nat. Bank v. Provident Finance Co.*, 176 Neb. 45, 125 N.W.2d 78 (1963).

Filing of conditional sales contract is not required, but notation on certificate of title is. *Universal C.I.T. Credit Corp. v. Vogt*, 165 Neb. 611, 86 N.W.2d 771 (1957).

Chattel mortgage was void as to creditors where notation on certificate of title was made after levy of execution. *Alliance Loan & Inv. Co. v. Morgan*, 154 Neb. 745, 49 N.W.2d 593 (1951).

## 3. Miscellaneous

This section applies to dealers as well as general purchasers. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

Legislature intended to eliminate the previous practice of filing chattel mortgages on motor vehicles in the chattel mortgage records. *Securities Credit Corp. v. Pindell*, 153 Neb. 298, 44 N.W.2d 501 (1950).

For purpose of perfecting security interest in mobile homes manufactured by debtor and assigned to trust, debtor corporation's president could not act as agent of trust and president's possession of homes and certificates of origin was not possession of trust and did not give trust possession sufficient to perfect interest. *In re North American Builders, Inc.*, 320 F.Supp. 1229 (D. Neb. 1970).

### 60-164.01 Electronic certificate of title; changes authorized.

If a certificate of title is an electronic certificate of title record, upon application by an owner or a lienholder and payment of the fee prescribed in section 60-154, the following changes may be made to a certificate of title electronically and without printing a certificate of title:

- (1) Changing the name of an owner to reflect a legal change of name;
- (2) Removing the name of an owner with the consent of all owners and lienholders;
- (3) Adding an additional owner with the consent of all owners and lienholders; or
- (4) Beginning on an implementation date designated by the director on or before January 1, 2022, adding, changing, or removing a transfer-on-death beneficiary designation.

**Source:** Laws 2017, LB263, § 19; Laws 2018, LB909, § 28; Laws 2021, LB113, § 2.

Operative date August 28, 2021.

### 60-165 Security interest in all-terrain vehicle, minibike, utility-type vehicle, or low-speed vehicle; perfection; priority; notation of lien; when.

(1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, in a utility-type vehicle so perfected before, on, or after January 1, 2011, or in a low-speed vehicle so perfected before, on, or after January 1, 2012, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a

continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle certificate of title is issued and a notation of lien is made as provided in section 60-164.

(2) Any lien noted on the face of an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle certificate of title or on an electronic certificate of title record pursuant to subsection (1), (3), (4), (5), or (6) of this section, on behalf of the holder of a security interest in the all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle which was previously perfected pursuant to article 9, Uniform Commercial Code, shall have priority as of the date such security interest was originally perfected.

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

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

(5) If the owner of a utility-type vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2011, the security interest holder may obtain a certificate of title in the name of the owner of the utility-type vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(6) If the owner of a low-speed vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2012, the security interest holder may obtain a certificate of title in the name of the owner of the low-speed vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

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

**Source:** Laws 2005, LB 276, § 65; Laws 2009, LB202, § 16; Laws 2010, LB650, § 18; Laws 2011, LB289, § 11.

#### **60-165.01 Printed certificate of title; when issued.**

(1) A lienholder, at the owner's request, may request the issuance of a printed certificate of title if the owner of the vehicle relocates to another state or country or if requested for any other purpose approved by the department. Upon proof by the owner that a lienholder has not provided the requested certificate of title within fifteen days after the owner's request, the department may issue to the owner a printed certificate of title with all liens duly noted.

(2) If a nonresident applying for a certificate of title pursuant to subsection (4) of section 60-144 indicates on the application that the applicant will immediately surrender the certificate of title to the appropriate official in the applicant's state of residence in order to have a certificate of title issued by that state and the county treasurer finds that there is a lien or encumbrance on the vehicle, the county treasurer shall issue a printed certificate of title with all liens duly noted and deliver the certificate of title to the applicant.

**Source:** Laws 2009, LB202, § 17; Laws 2015, LB94, § 1.

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

(1)(a) This subsection applies prior to the implementation date designated by the Director of Motor Vehicles pursuant to subsection (2) of section 60-1508.

(b) In the event of (i) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale or as provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, and 60-2401 to 60-2411, (ii) the engine of a vehicle being replaced by another engine, (iii) a vehicle being sold to satisfy storage or repair charges or under section 76-1607, or (iv) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county treasurer of any county or the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to subsection (2) of section 60-1508.

(b) In the event of (i) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale or as provided in section 30-24,125, sections 52-601.01 to 52-605, sections 60-1901 to 60-1911, and sections 60-2401 to 60-2411, (ii) the engine of a vehicle being replaced by another engine, (iii) a vehicle being sold to satisfy storage or repair charges or under section 76-1607, or (iv) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, and upon acceptance of an electronic certificate of title record after repossession, in addition to the title requirements in this section, the county treasurer of any county or the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto.

(3) If the prior certificate of title issued for such vehicle provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner.

(4) Only an affidavit by the person or agent of the person to whom possession of such vehicle has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of a court order or an instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize any county treasurer to issue a certificate of title, as the case may be.

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

**Source:** Laws 2005, LB 276, § 66; Laws 2007, LB286, § 15; Laws 2009, LB202, § 18; Laws 2012, LB751, § 8; Laws 2012, LB801, § 41; Laws 2017, LB263, § 20; Laws 2017, LB492, § 13; Laws 2018, LB193, § 87; Laws 2018, LB275, § 2; Laws 2018, LB909, § 29.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

**60-167 Bonded certificate of title; application; fee; bond; issuance; release; statement on title; recall; procedure.**

(1) The department shall issue a bonded certificate of title to an applicant who:

- (a) Presents evidence reasonably sufficient to satisfy the department of the applicant's ownership of the vehicle or security interest in the vehicle;
- (b) Provides a statement that an identification inspection has been conducted pursuant to section 60-146;
- (c) Pays the fee as prescribed in section 60-160; and
- (d) Files a bond in a form prescribed by the department and executed by the applicant.

(2) The bond shall be issued by a surety company authorized to transact business in this state, in an amount equal to one and one-half times the value of the vehicle as determined by the department using reasonable appraisal methods, and conditioned to indemnify any prior owner and secured party, any subsequent purchaser and secured party, and any successor of the purchaser and secured party for any expense, loss, or damage, including reasonable attorney's fees, incurred by reason of the issuance of the certificate of title to the vehicle or any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the vehicle. An interested person may have a cause of action to recover on the bond for a breach of the conditions of the bond. The aggregate liability of the surety to all persons having a claim shall not exceed the amount of the bond.

(3) At the end of three years after the issuance of the bond, the holder of the certificate of title may apply to the department on a form prescribed by the department for the release of the bond and the removal of the notice required by subsection (4) of this section if no claim has been made on the bond. The department may release the bond at the end of three years after the issuance of

the bond if all questions as to the ownership of the vehicle have been answered to the satisfaction of the department unless the department has been notified of the pendency of an action to recover on the bond. If the currently valid certificate of title is surrendered to the department, the department may release the bond prior to the end of the three-year period.

(4) The department shall include the following statement on a bonded certificate of title issued pursuant to this section and any subsequent title issued as a result of a title transfer while the bond is in effect:

NOTICE: THIS VEHICLE MAY BE SUBJECT TO AN UNDISCLOSED INTEREST, BOND NUMBER . . . . .

(5) The department shall recall a bonded certificate of title if the department finds that the application for the title contained a false statement or if a check presented by the applicant for a bonded certificate of title is returned uncollected by a financial institution.

**Source:** Laws 2005, LB 276, § 67.

**60-168 Certificate of title; loss or mutilation; duplicate certificate; subsequent purchaser, rights; recovery of original; duty of owner.**

(1) In the event of a lost or mutilated certificate of title, the owner of the vehicle or the holder of a lien on the vehicle shall apply, upon a form prescribed by the department, to the department or to any county treasurer for a duplicate certificate of title and shall pay the fee prescribed by section 60-156. The application shall be signed and sworn to by the person making the application or a person authorized to sign under section 60-151. Thereupon the county treasurer, with the approval of the department, or the department shall issue a duplicate certificate of title to the person entitled to receive the certificate of title. If the records of the title have been destroyed pursuant to section 60-152, the county treasurer shall issue a duplicate certificate of title to the person entitled to receive the same upon such showing as the county treasurer may deem sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county treasurer to issue a duplicate certificate of title. A duplicate certificate of title so issued shall show only those unreleased liens of record. The new purchaser shall be entitled to receive an original certificate of title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county treasurer prescribed in section 60-144.

(2) Any purchaser of a vehicle for which a certificate of title was lost or mutilated may at the time of purchase require the seller of the same to indemnify him or her and all subsequent purchasers of the vehicle against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall forthwith surrender the same to the county treasurer or the department for cancellation.

**Source:** Laws 2005, LB 276, § 68; Laws 2007, LB286, § 16; Laws 2012, LB751, § 9; Laws 2012, LB801, § 42.

Issuance of duplicate certificates is authorized, but purchaser is charged with notice of possible impairment of title. Allstate Ins. Co. v. Enzolera, 164 Neb. 38, 81 N.W.2d 588 (1957).

**60-168.01 Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect; removal of improperly noted lien on certificate of title; procedure.**

(1) The department, upon receipt of clear and convincing evidence of a failure to note a required brand or failure to note a lien on a certificate of title, shall notify the holder of such certificate of title to deliver to the county treasurer or the department, within fifteen days after the date on the notice, such certificate of title to permit the noting of such brand or lien. After notation, the county treasurer or the department shall deliver the corrected certificate of title to the holder as provided by section 60-152. If a holder fails to deliver a certificate of title to the county treasurer or to the department, within fifteen days after the date on the notice for the purpose of noting such brand or lien on the certificate of title, the department shall cancel the certificate of title. This subsection does not apply when noting a lien in accordance with subsection (6) of section 60-164.

(2) The department may remove a lien on a certificate of title when such lien was improperly noted if evidence of the improperly noted lien is submitted to the department and the department finds the evidence sufficient to support removal of the lien. The department shall send notification prior to removal of the lien to the last-known address of the lienholder. The lienholder must respond within thirty days after the date on the notice and provide sufficient evidence to support that the lien should not be removed. If the lienholder fails to respond to the notice, the lien may be removed by the department.

**Source:** Laws 2007, LB286, § 17; Laws 2009, LB202, § 19; Laws 2012, LB801, § 43; Laws 2018, LB909, § 30.

**60-168.02 Certificate of title in dealer's name; issuance authorized; documentation and fees required; dealer; duties.**

(1) When a motor vehicle, trailer, or semitrailer is purchased by a motor vehicle dealer or trailer dealer and the original assigned certificate of title has been lost or mutilated, the dealer selling such motor vehicle or trailer may apply for an original certificate of title in the dealer's name. The following documentation and fees shall be submitted by the dealer:

- (a) An application for a certificate of title in the name of such dealer;
- (b) A photocopy from the dealer's records of the front and back of the lost or mutilated original certificate of title assigned to a dealer;
- (c) A notarized affidavit from the purchaser of such motor vehicle or trailer for which the original assigned certificate of title was lost or mutilated stating that the original assigned certificate of title was lost or mutilated; and
- (d) The appropriate certificate of title fee.

(2) The application and affidavit shall be on forms prescribed by the department. When the motor vehicle dealer or trailer dealer receives the new certificate of title in such dealer's name and assigns it to the purchaser, the dealer shall record the original sale date and provide the purchaser with a copy of the front and back of the original lost or mutilated certificate of title as



evidence as to why the purchase date of the motor vehicle or trailer is prior to the issue date of the new certificate of title.

**Source:** Laws 2007, LB286, § 18; Laws 2008, LB756, § 4; Laws 2017, LB263, § 21.

**60-169 Vehicle; certificate of title; surrender and cancellation; when required; licensed wrecker or salvage dealer; report; contents; fee; mobile home or manufactured home affixed to real property; certificate of title; surrender and cancellation; procedure; effect; detachment; owner; duties.**

(1)(a) Except as otherwise provided in subdivision (c) of this subsection, each owner of a vehicle and each person mentioned as owner in the last certificate of title, when the vehicle is dismantled, destroyed, or changed in such a manner that it loses its character as a vehicle or changed in such a manner that it is not the vehicle described in the certificate of title, shall surrender his or her certificate of title to any county treasurer or to the department. If the certificate of title is surrendered to a county treasurer, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon the records and shall notify the department of such cancellation. Beginning on the implementation date designated by the director pursuant to subsection (3) of section 60-1508, a wrecker or salvage dealer shall report electronically to the department using the electronic reporting system. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

(b) This subdivision applies to all licensed wrecker or salvage dealers and, except as otherwise provided in this subdivision, to each vehicle located on the premises of such dealer. For each vehicle required to be reported under 28 C.F.R. 25.56, as such regulation existed on January 1, 2019, the information obtained by the department under this section may be reported to the National Motor Vehicle Title Information System in a format that will satisfy the requirement for reporting under 28 C.F.R. 25.56, as such regulation existed on January 1, 2019. Such report shall include:

- (i) The name, address, and contact information for the reporting entity;
- (ii) The vehicle identification number;
- (iii) The date the reporting entity obtained such motor vehicle;
- (iv) The name of the person from whom such motor vehicle was obtained, for use only by a law enforcement or other appropriate government agency;
- (v) A statement of whether the motor vehicle was or will be crushed, disposed of, offered for sale, or used for another purpose; and
- (vi) Whether the motor vehicle is intended for export outside of the United States.

The department may set and collect a fee, not to exceed the cost of reporting to the National Motor Vehicle Title Information System, from wrecker or salvage dealers for electronic reporting to the National Motor Vehicle Title Information System, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. This subdivision does not apply to any vehicle reported by a wrecker or salvage dealer to the National Motor Vehicle Title Information System as required under 28 C.F.R. 25.56, as such regulation existed on January 1, 2019.

(c)(i) In the case of a mobile home or manufactured home for which a certificate of title has been issued, if such mobile home or manufactured home is affixed to real property in which each owner of the mobile home or manufactured home has any ownership interest, the certificate of title may be surrendered for cancellation to the county treasurer of the county where such mobile home or manufactured home is affixed to real property if at the time of surrender the owner submits to the county treasurer an affidavit of affixture on a form provided by the department that contains all of the following, as applicable:

(A) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(B) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(C) The legal description of the real property upon which the mobile home or manufactured home is affixed and the names of all of the owners of record of the real property;

(D) A statement that the mobile home or manufactured home is affixed to the real property;

(E) The written consent of each holder of a lien duly noted on the certificate of title to the release of such lien and the cancellation of the certificate of title;

(F) A copy of the certificate of title surrendered for cancellation; and

(G) The name and address of an owner, a financial institution, or another entity to which notice of cancellation of the certificate of title may be delivered.

(ii) The person submitting an affidavit of affixture pursuant to subdivision (c)(i) of this subsection shall swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement in the affidavit may subject the person to penalties relating to perjury under section 28-915.

(2) If a certificate of title of a mobile home or manufactured home is surrendered to the county treasurer, along with the affidavit required by subdivision (1)(c) of this section, he or she shall enter a cancellation upon his or her records, notify the department of such cancellation, forward a duplicate original of the affidavit to the department, and deliver a duplicate original of the executed affidavit under subdivision (1)(c) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The county treasurer shall be entitled to collect fees from the person submitting the affidavit in accordance with section 33-109 to cover the costs of filing such affidavit. Following the cancellation of a certificate of title for a mobile home or manufactured home, the county treasurer or designated county official shall not issue a certificate of title for such mobile home or manufactured home, except as provided in subsection (5) of this section.

(3) If a mobile home or manufactured home is affixed to real estate before June 1, 2006, a person who is the holder of a lien or security interest in both the mobile home or manufactured home and the real estate to which it is affixed on such date may enforce its liens or security interests by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real estate.

(4) A mobile home or manufactured home for which the certificate of title has been canceled and for which an affidavit of affixture has been duly recorded pursuant to subsection (2) of this section shall be treated as part of the real estate upon which such mobile home or manufactured home is located. Any lien thereon shall be perfected and enforced in the same manner as a lien on real estate. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only as a part of the real estate to which it is affixed.

(5)(a) If each owner of both the mobile home or manufactured home and the real estate described in subdivision (1)(c) of this section intends to detach the mobile home or manufactured home from the real estate, the owner shall do both of the following: (i) Before detaching the mobile home or manufactured home, record an affidavit of detachment in the office of the register of deeds in the county in which the affidavit is recorded under subdivision (1)(c) of this section; and (ii) apply for a certificate of title for the mobile home or manufactured home pursuant to section 60-147.

(b) The affidavit of detachment shall contain all of the following:

(i) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(ii) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(iii) The legal description of the real estate from which the mobile home or manufactured home is to be detached and the names of all of the owners of record of the real estate;

(iv) A statement that the mobile home or manufactured home is to be detached from the real property;

(v) A statement that the certificate of title of the mobile home or manufactured home has previously been canceled;

(vi) The name of each holder of a lien of record against the real estate from which the mobile home or manufactured home is to be detached, with the written consent of each holder to the detachment; and

(vii) The name and address of an owner, a financial institution, or another entity to which the certificate of title may be delivered.

(6) An owner of an affixed mobile home or manufactured home for which the certificate of title has previously been canceled pursuant to subsection (2) of this section shall not detach the mobile home or manufactured home from the real estate before a certificate of title for the mobile home or manufactured home is issued by the county treasurer or department. If a certificate of title is issued by the county treasurer or department, the mobile home or manufactured home is no longer considered part of the real property. Any lien thereon shall be perfected pursuant to section 60-164. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only by way of a certificate of title.

(7) For purposes of this section:

(a) A mobile home or manufactured home is affixed to real estate if the wheels, towing hitches, and running gear are removed and it is permanently attached to a foundation or other support system; and

(b) Ownership interest means the fee simple interest in real estate or an interest as the lessee under a lease of the real property that has a term that continues for at least twenty years after the recording of the affidavit under subsection (2) of this section.

(8) Upon cancellation of a certificate of title in the manner prescribed by this section, the county treasurer and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

**Source:** Laws 2005, LB 276, § 69; Laws 2006, LB 663, § 19; Laws 2012, LB14, § 6; Laws 2012, LB751, § 10; Laws 2012, LB801, § 44; Laws 2018, LB909, § 31; Laws 2019, LB719, § 1.

**60-170 Nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.**

(1) When an insurance company authorized to do business in Nebraska acquires a vehicle which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may make application for a nontransferable certificate of title by surrendering the certificate of title to the county treasurer. A nontransferable certificate of title shall be issued in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160 and shall be on a form prescribed by the department.

(2) A vehicle which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under the Motor Vehicle Certificate of Title Act.

(3) When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the vehicle.

**Source:** Laws 2005, LB 276, § 70; Laws 2012, LB801, § 45.

**60-171 Salvage branded certificate of title; terms, defined.**

For purposes of sections 60-171 to 60-177:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a vehicle plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Flood damaged means damage to a vehicle resulting from being submerged in water to the point that rising water has reached over the floorboard, has entered the passenger compartment, and has caused damage to any electrical, computerized, or mechanical components. Flood damaged specific-

ly does not apply to a vehicle that an inspection, conducted by an insurance claim representative or a vehicle repairer, indicates:

(a) Has no electrical, computerized, or mechanical components damaged by water; or

(b) Had one or more electrical, computerized, or mechanical components damaged by water and all such damaged components were repaired or replaced;

(3) Late model vehicle means a vehicle which has (a) a manufacturer's model year designation of, or later than, the year in which the vehicle was wrecked, damaged, or destroyed, or any of the six preceding years or (b)(i) in the case of vehicles other than all-terrain vehicles, utility-type vehicles, and minibikes, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter or (ii) in the case of all-terrain vehicles, utility-type vehicles, or minibikes, a retail value of more than one thousand seven hundred fifty dollars until January 1, 2010, and a retail value of more than one thousand seven hundred fifty dollars increased by two hundred fifty dollars every five years thereafter;

(4) Manufacturer buyback means the designation of a vehicle with an alleged nonconformity when the vehicle (a) has been replaced by a manufacturer or (b) has been repurchased by a manufacturer as the result of court judgment, arbitration, or any voluntary agreement entered into between the manufacturer or its agent and a consumer;

(5) Previously salvaged or rebuilt each mean the designation of a rebuilt vehicle which was previously required to be issued a salvage branded certificate of title and which has been inspected as provided in section 60-146;

(6) Retail value means the actual cash value, fair market value, or retail value of a vehicle as (a) set forth in a current edition of any nationally recognized compilation, including automated databases, of retail values or (b) determined pursuant to a market survey of comparable vehicles with respect to condition and equipment; and

(7) Salvage means the designation of a vehicle which is:

(a) A late model vehicle which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the vehicle to its condition immediately before it was wrecked, damaged, or destroyed and to restore the vehicle to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the vehicle at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the vehicle as a salvage vehicle by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the vehicle.

**Source:** Laws 2005, LB 276, § 71; Laws 2010, LB650, § 19; Laws 2014, LB446, § 1; Laws 2018, LB909, § 32; Laws 2019, LB270, § 10.

**60-172 Salvage branded certificate of title; required disclosure.**

A certificate of title issued on or after January 1, 2003, shall disclose in writing, from any records readily accessible to the department or county officials or a law enforcement officer, anything which indicates that the vehicle was previously issued a title in another jurisdiction that bore any word or

symbol signifying that the vehicle was damaged, including, but not limited to, older model salvage, unrebuildable, parts only, scrap, junk, nonrepairable, reconstructed, rebuilt, flood damaged, damaged, buyback, or any other indication, symbol, or word of like kind, and the name of the jurisdiction issuing the previous title.

**Source:** Laws 2005, LB 276, § 72.

**60-173 Salvage branded certificate of title; insurance company; total loss settlement; when issued.**

(1) When an insurance company acquires a salvage vehicle through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county treasurer, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage vehicle for which a total loss settlement is made unless the owner of the salvage vehicle elects to retain the salvage vehicle.

(2) If the owner elects to retain the salvage vehicle, the insurance company shall notify the department of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the vehicle. Beginning on the implementation date designated by the director pursuant to subsection (3) of section 60-1508, the insurance company shall report electronically to the department using the electronic reporting system. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county treasurer in the county designated in section 60-144. Upon receipt of the certificate of title, the county treasurer shall issue a salvage branded certificate of title for the vehicle unless the vehicle has been repaired and inspected as provided in section 60-146, in which case the county treasurer shall issue a previously salvaged branded certificate of title for the vehicle.

(3) An insurance company may apply to the department for a salvage branded certificate of title without obtaining a properly endorsed certificate of title from the owner or other evidence of ownership as prescribed by the department if it has been at least thirty days since the company obtained oral or written acceptance by the owner of an offer in an amount in settlement of a total loss. The insurance company shall submit an application form prescribed by the department for a salvage branded certificate of title accompanied by an affidavit from the insurance company that it has made at least two written attempts and has been unable to obtain the proper endorsed certificate of title from the owner following an oral or written acceptance by the owner of an offer of an amount in settlement of a total loss and evidence of settlement.

**Source:** Laws 2005, LB 276, § 73; Laws 2007, LB286, § 19; Laws 2012, LB801, § 46; Laws 2014, LB701, § 1; Laws 2018, LB909, § 33; Laws 2019, LB270, § 11.

**60-174 Salvage branded certificate of title; salvage, previously salvaged or rebuilt, flood damaged, or manufacturer buyback title brand; inspection; when.**

Whenever a title is issued in this state for a vehicle that is designated a salvage, previously salvaged or rebuilt, flood damaged, or manufacturer buy-

back, the following title brands shall be required: Salvage, previously salvaged, flood damaged, or manufacturer buyback. A certificate branded salvage, previously salvaged, flood damaged, or manufacturer buyback shall be administered in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160. When a salvage branded certificate of title is surrendered for a certificate of title branded previously salvaged, the application for a certificate of title shall be accompanied by a statement of inspection as provided in section 60-146.

**Source:** Laws 2005, LB 276, § 74; Laws 2018, LB909, § 34; Laws 2019, LB270, § 12.

**60-175 Salvage branded, flood-damaged branded, or manufacturer buyback branded certificate of title; when issued; procedure.**

Any person who acquires ownership of a salvage, flood-damaged, or manufacturer buyback vehicle for which he or she does not obtain a salvage branded, flood-damaged branded, or manufacturer buyback branded certificate of title shall surrender the certificate of title to the county treasurer and make application for a salvage branded, flood-damaged branded, or manufacturer buyback branded certificate of title within thirty days after acquisition or prior to the sale or resale of the vehicle or any major component part of such vehicle or use of any major component part of the vehicle, whichever occurs earlier.

**Source:** Laws 2005, LB 276, § 75; Laws 2012, LB801, § 47; Laws 2018, LB909, § 35.

**60-176 Salvage branded certificate of title; prohibited act; penalty.**

Any person who knowingly transfers a wrecked, damaged, or destroyed vehicle in violation of sections 60-171 to 60-177 is guilty of a Class IV felony.

**Source:** Laws 2005, LB 276, § 76.

**60-177 Salvage branded certificate of title; sections; how construed.**

Nothing in sections 60-171 to 60-177 shall be construed to require the actual repair of a wrecked, damaged, or destroyed vehicle to be designated as salvage.

**Source:** Laws 2005, LB 276, § 77.

**60-178 Stolen vehicle; duties of law enforcement and department.**

Every sheriff, chief of police, or member of the patrol having knowledge of a stolen vehicle shall immediately furnish the department with full information in connection therewith. The department, whenever it receives a report of the theft or conversion of such a vehicle, whether owned in this or any other state, together with the make and manufacturer's serial number or motor number, if applicable, shall make a distinctive record thereof and file the same in the numerical order of the manufacturer's serial number with the index records of such vehicle of such make. The department shall prepare a report listing such vehicles stolen and recovered as disclosed by the reports submitted to it, and the report shall be distributed as it may deem advisable. In the event of the receipt from any county treasurer of a copy of a certificate of title to such vehicle, the department shall immediately notify the rightful owner thereof and the county treasurer who issued such certificate of title, and if upon investigation it appears that such certificate of title was improperly issued, the depart-

ment shall immediately cancel the same. In the event of the recovery of such stolen or converted vehicle, the owner shall immediately notify the department, which shall cause the record of the theft or conversion to be removed from its file.

**Source:** Laws 2005, LB 276, § 78; Laws 2012, LB801, § 48.

**60-179 Prohibited acts; penalty.**

A person commits a Class IV felony if he or she (1) forges any certificate of title or manufacturer's or importer's certificate to a vehicle, any assignment of either certificate, or any cancellation of any lien on a vehicle, (2) holds or uses such certificate, assignment, or cancellation knowing the same to have been forged, (3) procures or attempts to procure a certificate of title to a vehicle or passes or attempts to pass a certificate of title or any assignment thereof to a vehicle, knowing or having reason to believe that such vehicle has been stolen, (4) sells or offers for sale in this state a vehicle on which the motor number or manufacturer's serial number has been destroyed, removed, covered, altered, or defaced with knowledge of the destruction, removal, covering, alteration, or defacement of such motor number or manufacturer's serial number, (5) knowingly uses a false or fictitious name, knowingly gives a false or fictitious address, knowingly makes any false statement in any application or affidavit required under the Motor Vehicle Certificate of Title Act or in a bill of sale or sworn statement of ownership, or (6) otherwise knowingly commits a fraud in any application for a certificate of title.

**Source:** Laws 2005, LB 276, § 79.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Although making a false affidavit was a crime, it would not have been effective in obtaining a certificate of title had holder of certificate recorded its lien. *First Nat. Bank v. Provident Finance Co.*, 176 Neb. 45, 125 N.W.2d 78 (1963).

**60-180 Violations; penalty.**

(1) A person who operates in this state a vehicle for which a certificate of title is required without having such certificate in accordance with the Motor Vehicle Certificate of Title Act or upon which the certificate of title has been canceled is guilty of a Class III misdemeanor.

(2) A person who is a dealer or acting on behalf of a dealer and who acquires, purchases, holds, or displays for sale a new vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title therefor as provided for in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(3) A person who fails to surrender any certificate of title or any certificate of registration or license plates or tags upon cancellation of the same by the department and notice thereof as prescribed in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(4) A person who fails to surrender the certificate of title to the county treasurer or department as provided in section 60-169 in case of the destruction or dismantling or change of a vehicle in such respect that it is not the vehicle described in the certificate of title is guilty of a Class III misdemeanor.

(5) A person who purports to sell or transfer a vehicle without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or



importer's certificate thereto duly assigned to such purchaser as provided in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(6) A person who knowingly alters or defaces a certificate of title or manufacturer's or importer's certificate is guilty of a Class III misdemeanor.

(7) Except as otherwise provided in section 60-179, a person who violates any of the other provisions of the Motor Vehicle Certificate of Title Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 276, § 80; Laws 2012, LB751, § 11; Laws 2012, LB801, § 49.

Legislature contemplated that form provided must be fully and properly executed. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

**60-181 Vehicle identification inspections; training expenses; how paid.**

The Nebraska State Patrol Cash Fund shall be used to defray the expenses of training personnel in title document examination, vehicle identification, and fraud and theft investigation and to defray the patrol's expenses arising pursuant to sections 60-181 to 60-189, including those incurred for printing and distribution of forms, personal services, hearings, and similar administrative functions. Personnel may include, but shall not be limited to, county treasurers, investigative personnel of the Nebraska Motor Vehicle Industry Licensing Board, and peace officers as defined in section 60-646. The training program shall be administered by the patrol. The patrol may utilize the Nebraska Law Enforcement Training Center to accomplish the training requirements of sections 60-181 to 60-189. The superintendent may make expenditures from the fund necessary to implement such training.

**Source:** Laws 2005, LB 276, § 81; Laws 2012, LB801, § 50.

**60-182 Vehicle identification inspections; sheriff; designate inspectors.**

The sheriff shall designate a sufficient number of persons to become certified to assure completion of inspections with reasonable promptness.

**Source:** Laws 2005, LB 276, § 82.

**60-183 Vehicle identification inspections; inspectors; certificate required; issuance.**

No person shall conduct an inspection unless he or she is the holder of a current certificate of training issued by the patrol. The certificate of training shall be issued upon completion of a course of instruction, approved by the patrol, in the identification of stolen and altered vehicles. The superintendent may require an individual to take such additional training as he or she deems necessary in order to maintain a current certificate of training.

**Source:** Laws 2005, LB 276, § 83.

**60-184 Vehicle identification inspections; application for training; contents.**

The sheriff may designate an employee of his or her office, any individual who is a peace officer as defined in section 60-646, or, by agreement, a county treasurer to assist in accomplishing inspections. Upon designation, the person shall request approval for training from the superintendent. Any person re-

requesting approval for training shall submit a written application to the patrol. Such application shall include the following information: (1) The name and address of the applicant; (2) the name and address of the agency employing the applicant and the name of the agency head; and (3) such biographical information as the superintendent may require to facilitate the designation authorized by this section.

**Source:** Laws 2005, LB 276, § 84; Laws 2012, LB801, § 51.

**60-185 Vehicle identification inspections; application for training; investigation; denial; grounds.**

(1) Upon receipt of an application for training pursuant to section 60-184, the patrol may inquire into the qualifications of the applicant and may also inquire into the background of the applicant.

(2) The patrol shall not approve any applicant who has (a) knowingly purchased, sold, or done business in stolen vehicles or parts therefor, (b) been found guilty of any felony which has not been pardoned, been found guilty of any misdemeanor concerning fraud or conversion, or suffered any judgment in any civil action involving fraud, misrepresentation, or conversion, or (c) made a false material statement in his or her application.

**Source:** Laws 2005, LB 276, § 85.

**60-186 Vehicle identification inspections; revocation of certificate of training; procedure; appeal.**

The patrol may, after notice and a hearing, revoke a certificate of training. The patrol shall only be required to hold a hearing if the hearing is requested in writing within fifteen days after notice of the proposed revocation is delivered by the patrol. The patrol may revoke a certificate of training for any reason for which an applicant may be denied approval for training pursuant to section 60-185. The patrol may revoke a certificate of training if the holder fails to keep a certificate current by taking any additional training the patrol may require. The patrol may revoke a certificate of training if the patrol finds that the holder is incompetent. A rebuttable presumption of incompetence shall arise from a finding by the patrol or a court of competent jurisdiction that the holder of a certificate of training has issued a statement of inspection for a stolen vehicle. Any person who feels himself or herself aggrieved by the patrol's decision to revoke a certificate may appeal such decision, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2005, LB 276, § 86.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**60-187 Vehicle identification inspections; attendance at training; restriction.**

No individual, other than a peace officer, shall attend training for inspections funded under the Nebraska State Patrol Cash Fund unless such individual has been designated by a sheriff and approved by the patrol.

**Source:** Laws 2005, LB 276, § 87.

**60-188 Vehicle identification inspections; restriction on authority to inspect.**

A holder of a certificate of training who is an employee of a licensee as determined by the department shall not inspect any vehicle which is not owned by his or her sponsoring licensee. A holder of a certificate of training who is a licensee shall not inspect any vehicle which he or she does not own.

**Source:** Laws 2005, LB 276, § 88.

**60-189 Vehicle identification inspections; superintendent; duty.**

The superintendent shall, from time to time, provide each county treasurer and each sheriff with a list of persons holding then current certificates of training.

**Source:** Laws 2005, LB 276, § 89; Laws 2012, LB801, § 52.

**60-190 Odometers; unlawful acts; exceptions.**

It shall be unlawful for any person to:

(1) Knowingly tamper with, adjust, alter, change, disconnect, or fail to connect an odometer of a motor vehicle, or cause any of the foregoing to occur, to reflect a mileage different than has actually been driven by such motor vehicle except as provided in section 60-191;

(2) With intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer is disconnected or nonfunctional; or

(3) Advertise for sale, sell, use, or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than that actually driven.

Sections 60-190 to 60-196 shall not apply to gross-rated motor vehicles of more than sixteen thousand pounds.

**Source:** Laws 2005, LB 276, § 90.

Because no rational basis exists between the State's objective of preventing odometer fraud and the requirement that motorcycle dealers register vehicles under conditions which do not obligate dealers of other motor vehicles to do so, this section

and section 60-133 offend the Equal Protection Clause of U.S. Const. amend. XIV. *State v. Garber*, 249 Neb. 648, 545 N.W.2d 75 (1996).

**60-191 Odometers; repaired or replaced; notice.**

If any odometer is repaired or replaced, the reading of the repaired or replaced odometer shall be set at the reading of the odometer repaired or replaced immediately prior to repair or replacement and the adjustment shall not be deemed a violation of section 60-190, except that when the repaired or replaced odometer is incapable of registering the same mileage as before such repair or replacement, the repaired or replaced odometer shall be adjusted to read zero and a notice in writing on a form prescribed by the department shall be attached to the left door frame of the motor vehicle, or in the case of a motorcycle, other than an autocycle, to the frame of the motorcycle, by the owner or his or her agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced and any removal or alteration of such notice so affixed shall be deemed a violation of section 60-190.

**Source:** Laws 2005, LB 276, § 91; Laws 2018, LB909, § 36.

Because no rational basis exists between the State's objective of preventing odometer fraud and the requirement that motorcycle dealers register vehicles under conditions which do not obligate dealers of other motor vehicles to do so, section 60-132

and this section offend the Equal Protection Clause of U.S. Const. amend. XIV. *State v. Garber*, 249 Neb. 648, 545 N.W.2d 75 (1996).

**60-192 Odometers; transferor; statement; contents.**

(1) The transferor of any motor vehicle described in subsection (2) of this section, which was equipped with an odometer by the manufacturer, shall provide to the transferee a statement, signed by the transferor, setting forth:

(a) The mileage on the odometer at the time of transfer; and

(b)(i) A statement that, to the transferor's best knowledge, such mileage is that actually driven by the motor vehicle;

(ii) A statement that the transferor has knowledge that the mileage shown on the odometer is in excess of the designated mechanical odometer limit; or

(iii) A statement that the odometer reading does not reflect the actual mileage and should not be relied upon because the transferor has knowledge that the odometer reading differs from the actual mileage and that the difference is greater than that caused by odometer calibration error.

(2) Prior to January 1, 2021, this section applies to the transfer of any motor vehicle of an age of less than ten years. Beginning January 1, 2021, this section applies to the transfer of any motor vehicle with a manufacturer's model year designation of 2011 or newer and an age of less than twenty years.

(3) If a discrepancy exists between the odometer reading and the actual mileage, a warning notice to alert the transferee shall be included with the statement. The transferor shall retain a true copy of such statement for a period of five years from the date of the transaction.

(4) Beginning on the implementation date designated by the director pursuant to subsection (2) of section 60-1508, if motor vehicle ownership has been transferred by operation of law pursuant to repossession under subdivision (2)(b)(iv) of section 60-166, the mileage shall be listed as the odometer reading at the time of the most recent transfer of ownership prior to the repossession of the motor vehicle. The adjustment shall not be deemed a violation of section 60-190.

**Source:** Laws 2005, LB 276, § 92; Laws 2017, LB263, § 22; Laws 2018, LB909, § 37; Laws 2020, LB944, § 9.

**60-193 Odometers; application for certificate of title; statement required.**

The statement required by section 60-192 shall be on a form prescribed by the department or shall appear on the certificate of title. Such statement shall be submitted with the application for certificate of title unless the statement appears on the certificate of title being submitted with the application. The statement required by section 60-192 shall appear on the new certificate of title issued in the name of the transferee. No certificate of title shall be issued for a motor vehicle unless the application is accompanied by such statement or unless the information required by such statement appears on the certificate of title being submitted with the application.

**Source:** Laws 2005, LB 276, § 93; Laws 2006, LB 663, § 20.

**60-194 Odometers; motor vehicle dealer; duties; violation; effect.**

No licensed motor vehicle dealer shall have in his or her possession as inventory for sale any used motor vehicle of an age of less than twenty-five years for which the dealer does not have in his or her possession the transfer-

or's statement required by section 60-192 unless a certificate of title has been issued for such motor vehicle in the name of the dealer. Violation of sections 60-190 to 60-196 shall be grounds for suspension or revocation of a motor vehicle dealer's license under the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2005, LB 276, § 94; Laws 2010, LB816, § 6.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-195 Odometers; motor vehicle dealer; not guilty of violation; conditions.**

A licensed motor vehicle dealer reassigning a certificate of title shall not be guilty of a violation of sections 60-190 to 60-196 if such dealer has in his or her possession the transferor's statement and if he or she has no knowledge that the statement is false and that the odometer does not reflect the mileage actually driven by the motor vehicle.

**Source:** Laws 2005, LB 276, § 95.

**60-196 Odometers; retention of statement; violation; penalty.**

Any transferor who does not retain a true copy of the odometer statement for a period of five years from the date of the transaction as required by section 60-192 shall be guilty of a Class V misdemeanor. Any person who violates any other provision of sections 60-190 to 60-196 shall be guilty of a Class IV felony.

**Source:** Laws 2005, LB 276, § 96.

**60-197 Certificates, statements, notations, rules, regulations, and orders under prior law; effect.**

(1) The repeal of Chapter 60, article 1, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Certificate of Title Act is not intended to affect the validity of manufacturer's or importer's certificates, certificates of title of any kind, odometer statements, or security interests or liens in existence on such date. All such certificates, statements, and notations are valid under the Motor Vehicle Certificate of Title Act as if issued or made under such act.

(2) The repeal of Chapter 60, article 1, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Certificate of Title Act is not intended to affect the validity of certificates of training for inspections in existence on such date. All such certificates are valid under the Motor Vehicle Certificate of Title Act as if issued under such act.

(3) The rules, regulations, and orders of the Director of Motor Vehicles and the Department of Motor Vehicles issued under Chapter 60, article 1, shall remain in effect as if issued under the Motor Vehicle Certificate of Title Act unless changed or eliminated by the director or the department to the extent such power is statutorily granted to the director and department.

**Source:** Laws 2005, LB 276, § 97.

**ARTICLE 2**

**EQUALIZATION FEES ON MOTOR VEHICLES**

Section	
60-201.	Repealed. Laws 1953, c. 222, § 40.
60-202.	Repealed. Laws 1953, c. 222, § 40.

**§ 60-201**

**MOTOR VEHICLES**

Section

- 60-202.01. Repealed. Laws 1953, c. 222, § 40.
- 60-202.02. Repealed. Laws 1953, c. 222, § 40.
- 60-203. Repealed. Laws 1953, c. 222, § 40.
- 60-204. Repealed. Laws 1953, c. 222, § 40.
- 60-205. Repealed. Laws 1953, c. 222, § 40.

**60-201 Repealed. Laws 1953, c. 222, § 40.**

**60-202 Repealed. Laws 1953, c. 222, § 40.**

**60-202.01 Repealed. Laws 1953, c. 222, § 40.**

**60-202.02 Repealed. Laws 1953, c. 222, § 40.**

**60-203 Repealed. Laws 1953, c. 222, § 40.**

**60-204 Repealed. Laws 1953, c. 222, § 40.**

**60-205 Repealed. Laws 1953, c. 222, § 40.**

**ARTICLE 3**

**MOTOR VEHICLE REGISTRATION**

**Cross References**

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## MOTOR VEHICLE REGISTRATION

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**60-301 Act, how cited.**

Sections 60-301 to 60-3,258 shall be known and may be cited as the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 1; Laws 2006, LB 663, § 21; Laws 2007, LB286, § 20; Laws 2007, LB349, § 1; Laws 2007, LB570, § 1; Laws 2008, LB756, § 5; Laws 2009, LB110, § 1; Laws 2009, LB129, § 1; Laws 2010, LB650, § 20; Laws 2011, LB163, § 16; Laws 2011, LB289, § 12; Laws 2012, LB216, § 1; Laws 2012, LB1155, § 7; Laws 2014, LB383, § 1; Laws 2014, LB816, § 1;

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**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 3, with LB166, section 1, and LB317, section 1, to reflect all amendments.

**Note:** Changes made by LB113 became operative April 1, 2021. Changes made by LB166 and LB317 became effective August 28, 2021.

### **60-302 Definitions, where found.**

For purposes of the Motor Vehicle Registration Act, unless the context otherwise requires, the definitions found in sections 60-302.01 to 60-360 shall be used.

**Source:** Laws 2005, LB 274, § 2; Laws 2007, LB286, § 21; Laws 2008, LB756, § 6; Laws 2010, LB650, § 21; Laws 2011, LB163, § 17; Laws 2012, LB1155, § 8; Laws 2015, LB231, § 7; Laws 2016, LB783, § 2; Laws 2017, LB263, § 24; Laws 2018, LB909, § 39; Laws 2019, LB156, § 7.

#### **60-302.01 Access aisle, defined.**

Access aisle means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal regulations adopted in response to the act, as the act and the regulations existed on January 1, 2021.

**Source:** Laws 2011, LB163, § 18; Laws 2019, LB79, § 3; Laws 2020, LB944, § 11; Laws 2021, LB149, § 3.  
Effective date August 28, 2021.

#### **60-303 Agricultural floater-spreader implement, defined.**

Agricultural floater-spreader implement means self-propelled equipment which is designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops and which has a gross laden weight of forty-eight thousand pounds or less and is equipped with floatation tires.

**Source:** Laws 2005, LB 274, § 3.

#### **60-304 Agricultural products, defined.**

Agricultural products means field crops and horticultural, viticultural, forestry, nut, dairy, livestock, poultry, bee, and farm products, including sod grown on the land owned or rented by the farmer, and the byproducts derived from any of them.

**Source:** Laws 2005, LB 274, § 4.

#### **60-305 All-terrain vehicle, defined.**

All-terrain vehicle means any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of twelve hundred pounds or less, (3) travels on three or more nonhighway tires, and (4) is designed for operator

use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger. All-terrain vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

**Source:** Laws 2005, LB 274, § 5; Laws 2014, LB814, § 5.

**60-306 Alternative fuel, defined.**

Alternative fuel includes electricity, solar power, and any other source of energy not otherwise taxed under the motor fuel laws as defined in section 66-712 which is used to power a motor vehicle. Alternative fuel does not include motor vehicle fuel as defined in section 66-482, diesel fuel as defined in section 66-482, or compressed fuel as defined in section 66-6,100.

**Source:** Laws 2005, LB 274, § 6; Laws 2011, LB289, § 13.

**60-307 Ambulance, defined.**

Ambulance means any privately or publicly owned motor vehicle that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland transportation of patients upon the highways in this state or any other motor vehicle used for such purposes but does not include or mean any motor vehicle owned or operated under the direct control of an agency of the United States Government.

**Source:** Laws 2005, LB 274, § 7.

**60-308 Apportionable vehicle, defined.**

(1) Apportionable vehicle means any motor vehicle or trailer used or intended for use in two or more member jurisdictions that allocate or proportionally register motor vehicles or trailers and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property.

(2) Apportionable vehicle does not include any recreational vehicle, motor vehicle displaying restricted plates, city pickup and delivery vehicle, or government-owned motor vehicle.

(3) An apportionable vehicle that is a power unit shall (a) have two axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms, (b) have three or more axles, regardless of weight, or (c) be used in combination when the weight of such combination exceeds twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms gross vehicle weight. Vehicles or combinations of vehicles having a gross vehicle weight of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms or less and two-axle vehicles may be proportionally registered at the option of the registrant.

**Source:** Laws 2005, LB 274, § 8; Laws 2007, LB286, § 22; Laws 2018, LB177, § 1.

**60-309 Assembled vehicle, defined.**

Assembled vehicle means a motor vehicle or trailer which was manufactured or assembled less than thirty years prior to application for registration under the Motor Vehicle Registration Act and which is materially altered from its construction by the removal, addition, or substitution of new or used major component parts unless such major component parts were replaced under warranty by the original manufacturer of the motor vehicle or trailer. Its make shall be assembled, and its model year shall be the year in which the motor vehicle or trailer was assembled.

**Source:** Laws 2005, LB 274, § 9; Laws 2018, LB909, § 42.

**60-309.01 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) having antilock brakes, (4) designed to be controlled with a steering wheel and pedals, and (5) in which the operator and passenger ride either side by side or in tandem in a seating area that is equipped with a manufacturer-installed three-point safety belt system for each occupant and that has a seating area that either (a) is completely enclosed and is equipped with manufacturer-installed airbags and a manufacturer-installed roll cage or (b) is not completely enclosed and is equipped with a manufacturer-installed rollover protection system.

**Source:** Laws 2015, LB231, § 8; Laws 2018, LB909, § 43.

**60-310 Automobile liability policy, defined.**

Automobile liability policy means liability insurance written by an insurance carrier duly authorized to do business in this state protecting other persons from damages for liability on account of accidents occurring subsequent to the effective date of the insurance arising out of the ownership of a motor vehicle (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to the limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of other persons in any one accident. An automobile liability policy shall not exclude, limit, reduce, or otherwise alter liability coverage under the policy solely because the injured person making a claim is the named insured in the policy or residing in the household with the named insured.

**Source:** Laws 2005, LB 274, § 10; Laws 2013, LB316, § 1.

The prohibition from excluding or limiting liability coverage under the policy solely because the injured person was the named insured or a resident relative of the named insured applies to policies both with coverage limits at the minimum required by law and with coverage limits above the minimum required by law. It prohibits both exclusions that seek to com-

pletely exclude liability coverage for an injured insured or household member and exclusions that seek to limit, reduce, or alter the liability coverage to the minimum required by law for an injured insured or household member. *Shelter Mut. Ins. Co. v. Freudenburg*, 304 Neb. 1015, 938 N.W.2d 92 (2020).

**60-310.01 Auxiliary axle, defined.**

Auxiliary axle means an auxiliary undercarriage assembly with a fifth wheel and tow bar used to convert a semitrailer to a full trailer, commonly known as converter gears or converter dollies.

**Source:** Laws 2018, LB909, § 40.

**60-311 Base jurisdiction, defined.**

Base jurisdiction means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where miles or kilometers are accrued by the fleet, and where operational records of such fleet are maintained or can be made available.

**Source:** Laws 2005, LB 274, § 11; Laws 2006, LB 853, § 1; Laws 2007, LB239, § 1; Laws 2008, LB756, § 7.

**60-312 Boat dealer, defined.**

Boat dealer means a person engaged in the business of buying, selling, or exchanging boats at retail who has a principal place of business for such purposes in this state.

**Source:** Laws 2005, LB 274, § 12.

**60-313 Bus, defined.**

Bus means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

**Source:** Laws 2005, LB 274, § 13.

**60-314 Cabin trailer, defined.**

Cabin trailer means any trailer designed for living quarters and for being towed by a motor vehicle and not exceeding one hundred two inches in width, forty feet in length, or thirteen and one-half feet in height, except as provided in subdivision (2)(k) of section 60-6,288.

**Source:** Laws 2005, LB 274, § 14.

**60-314.01 Car toter or tow dolly, defined.**

Car toter or tow dolly means a two-wheeled conveyance designed or adapted to support the weight of one axle of a motor vehicle while being towed in combination behind another motor vehicle.

**Source:** Laws 2018, LB909, § 41.

**60-315 Collector, defined.**

Collector means the owner of one or more historical vehicles who collects, purchases, acquires, trades, or disposes of such historical vehicles or parts thereof for his or her own use in order to preserve, restore, and maintain a historical vehicle or vehicles for hobby purposes.

**Source:** Laws 2005, LB 274, § 15.

**60-316 Commercial motor vehicle, defined.**

(1) This subsection applies until January 1, 2023. Commercial motor vehicle means any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and does not include farm trucks or public power district motor vehicles.



(2) This subsection applies beginning January 1, 2023. Commercial motor vehicle means any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and does not include farm trucks, metropolitan utilities district motor vehicles, or public power district motor vehicles.

**Source:** Laws 2005, LB 274, § 16; Laws 2016, LB783, § 3; Laws 2018, LB909, § 44.

**60-317 Commercial trailer, defined.**

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, or utility trailers.

**Source:** Laws 2005, LB 274, § 17; Laws 2016, LB783, § 4; Laws 2017, LB263, § 25.

**60-318 Current model year vehicle, defined.**

Current model year vehicle means a motor vehicle or trailer for which the model year as designated by the manufacturer corresponds to the calendar year.

**Source:** Laws 2005, LB 274, § 18.

**60-319 Department, defined.**

Department means the Department of Motor Vehicles.

**Source:** Laws 2005, LB 274, § 19.

**60-320 Repealed. Laws 2012, LB 801, § 102.**

**60-321 Director, defined.**

Director means the Director of Motor Vehicles.

**Source:** Laws 2005, LB 274, § 21.

**60-322 Electric personal assistive mobility device, defined.**

Electric personal assistive mobility device means a self-balancing, two-non-tandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

**Source:** Laws 2005, LB 274, § 22.

**60-323 Evidence of insurance, defined.**

Evidence of insurance means evidence of a current and effective automobile liability policy in paper or electronic format.

**Source:** Laws 2005, LB 274, § 23; Laws 2014, LB816, § 2.

**60-324 Farm trailer, defined.**

Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services. Farm trailer does not include a trailer so used when attached to a farm tractor.

**Source:** Laws 2005, LB 274, § 24; Laws 2007, LB286, § 23.

**60-325 Farm truck, defined.**

Farm truck means a truck or sport utility vehicle, including any combination of a truck, truck-tractor, or sport utility vehicle, and a trailer or semitrailer, of a farmer or rancher (1) used exclusively to carry a farmer's or rancher's own supplies, farm equipment, and household goods to or from the owner's farm or ranch, (2) used by the farmer or rancher to carry his or her own agricultural products to or from storage or market, (3) used by a farmer or rancher in exchange of services in such hauling of supplies or agricultural products, or (4) used occasionally to carry camper units, to tow boats or cabin trailers, or to carry or tow museum pieces or historical vehicles, without compensation, to events for public display or educational purposes.

**Source:** Laws 2005, LB 274, § 25; Laws 2007, LB286, § 24.

**60-326 Fertilizer trailer, defined.**

Fertilizer trailer means any trailer, including gooseneck applicators or trailers, designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and having a gross weight, including load thereon, of twenty thousand pounds or less.

**Source:** Laws 2005, LB 274, § 26.

**60-327 Film vehicle, defined.**

Film vehicle means any motor vehicle or trailer used exclusively by a nonresident production company temporarily on location in Nebraska producing a feature film, television commercial, documentary, or industrial or educational videotape production.

**Source:** Laws 2005, LB 274, § 27.

**60-328 Finance company, defined.**

Finance company means any person engaged in the business of financing sales of motor vehicles, motorcycles, or trailers, or purchasing or acquiring promissory notes, secured instruments, or other documents by which the motor vehicles, motorcycles, or trailers are pledged as security for payment of obligations arising from such sales and who may find it necessary to engage in the

activity of repossession and the sale of the motor vehicles, motorcycles, or trailers so pledged.

**Source:** Laws 2005, LB 274, § 28.

**60-328.01 Former military vehicle, defined.**

Former military vehicle means a motor vehicle that was manufactured for use in any country's military forces and is maintained to accurately represent its military design and markings, regardless of the vehicle's size or weight, but is no longer used, or never was used, by a military force.

**Source:** Laws 2019, LB156, § 8.

**60-329 Fleet, defined.**

Fleet means one or more apportionable vehicles.

**Source:** Laws 2005, LB 274, § 29.

**60-329.01 Golf car vehicle, defined.**

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes.

**Source:** Laws 2012, LB1155, § 9.

**60-330 Gross vehicle weight, defined.**

Gross vehicle weight means the sum of the empty weights of a truck or truck-tractor and the empty weights of any trailer, semitrailer, or combination thereof with which the truck or truck-tractor is to be operated in combination at any one time, plus the weight of the maximum load to be carried thereon at any one time.

**Source:** Laws 2005, LB 274, § 30.

**60-331 Gross vehicle weight rating, defined.**

Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 31.

**60-331.01 Handicapped or disabled parking permit, defined.**

Handicapped or disabled parking permit means a permit issued by the department that authorizes the use of parking spaces and access aisles that have been designated for the exclusive use of handicapped or disabled persons.

**Source:** Laws 2011, LB163, § 19; Laws 2014, LB657, § 3.

**60-331.02 Handicapped or disabled person, defined.**

Handicapped or disabled person means any individual with a severe visual, neurological, or physical impairment which limits personal mobility and results

in an inability to travel more than two hundred feet without stopping or without the use of a wheelchair, crutch, walker, or prosthetic, orthotic, or other assistant device, any individual whose personal mobility is limited as a result of respiratory problems, any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association, and any individual who has permanently lost all or substantially all the use of one or more limbs.

**Source:** Laws 2011, LB163, § 20; Laws 2016, LB865, § 1; Laws 2020, LB944, § 12.

**60-332 Highway, defined.**

Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

**Source:** Laws 2005, LB 274, § 32.

**60-333 Historical vehicle, defined.**

Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

**Source:** Laws 2005, LB 274, § 33; Laws 2006, LB 663, § 22; Laws 2007, LB286, § 25.

**60-334 Injurisdiction distance, defined.**

Injurisdiction distance means total miles or kilometers operated (1) in the State of Nebraska during the preceding year by the motor vehicle or vehicles registered and licensed for fleet operation and (2) in noncontracting reciprocity jurisdictions by fleet vehicles that are base-plated in Nebraska.

**Source:** Laws 2005, LB 274, § 34.

**60-334.01 International Registration Plan, defined.**

International Registration Plan means the International Registration Plan adopted by International Registration Plan, Inc.

**Source:** Laws 2008, LB756, § 8.

**60-335 Kit vehicle, defined.**

Kit vehicle means a motor vehicle or trailer which was assembled by a person other than a generally recognized manufacturer of motor vehicles or trailers by the use of a reproduction resembling a specific manufacturer's make and model that is at least thirty years old purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin. Kit vehicle does not include glider kits.

**Source:** Laws 2005, LB 274, § 35; Laws 2018, LB909, § 45.

**60-335.01 Licensed dealer, defined.**

Licensed dealer means a motor vehicle dealer, motorcycle dealer, or trailer dealer licensed under the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2017, LB263, § 26.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-336 Local truck, defined.**

Local truck means a truck and combinations of trucks, truck-tractors, or trailers operated solely within an incorporated city or village or within ten miles of the corporate limits of the city or village in which they are owned, operated, and registered.

**Source:** Laws 2005, LB 274, § 36.

**60-336.01 Low-speed vehicle, defined.**

Low-speed vehicle means a (1) four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2021, or (2) three-wheeled motor vehicle (a) whose maximum speed attainable is not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) which is equipped with a windshield and an occupant protection system. A motorcycle with a sidecar attached is not a low-speed vehicle.

**Source:** Laws 2007, LB286, § 26; Laws 2011, LB289, § 14; Laws 2014, LB776, § 1; Laws 2015, LB313, § 1; Laws 2016, LB929, § 2; Laws 2017, LB263, § 27; Laws 2018, LB909, § 46; Laws 2019, LB79, § 4; Laws 2019, LB270, § 13; Laws 2020, LB944, § 13; Laws 2021, LB149, § 4.  
Effective date August 28, 2021.

**60-336.02 Metropolitan utilities district, defined.**

Metropolitan utilities district means a district created pursuant to section 14-2101.

**Source:** Laws 2018, LB909, § 47.

**60-337 Minibike, defined.**

Minibike means a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. Minibike shall not include an electric personal assistive mobility device.

**Source:** Laws 2005, LB 274, § 37.

**60-337.01 Minitruck, defined.**

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or

less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

**Source:** Laws 2010, LB650, § 22; Laws 2012, LB898, § 2.

#### **60-338 Moped, defined.**

Moped means a device with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 2005, LB 274, § 38; Laws 2015, LB95, § 5.

#### **60-339 Motor vehicle, defined.**

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) bicycles as defined in section 60-611.

**Source:** Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27; Laws 2010, LB650, § 23; Laws 2011, LB289, § 15; Laws 2012, LB1155, § 10; Laws 2015, LB95, § 6.

Licensed automobile dealer is required to note mortgage lien on certificate of title. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

Legislative definition of motor vehicle for purposes of classification for licensing or taxing does not change the common

meaning of words with relation to other matters. *Moffitt v. State Automobile Ins. Assn.*, 140 Neb. 578, 300 N.W. 837 (1941), vacating on rehearing, 139 Neb. 512, 297 N.W. 918 (1941).

Failure of supposed owner to register automobile as required by law is suspicious circumstance, putting purchaser on inquiry. *Wallich v. Sandlovich*, 111 Neb. 318, 196 N.W. 317 (1923).

#### **60-340 Motorcycle, defined.**

Motorcycle means any motor vehicle having a seat or saddle for use of the operator and designed to travel on not more than three wheels in contact with the ground. Motorcycle includes an autocycle.

**Source:** Laws 2005, LB 274, § 40; Laws 2015, LB231, § 9; Laws 2018, LB909, § 48.

**60-341 Noncontracting reciprocity jurisdiction, defined.**

Noncontracting reciprocity jurisdiction means any jurisdiction which is not a party to any type of contracting agreement between the State of Nebraska and one or more other jurisdictions for registration purposes on commercial motor vehicles or trailers and, as a condition to operate on the highways of that jurisdiction, (1) does not require any type of motor vehicle or trailer registration or allocation of motor vehicles or trailers for registration purposes or (2) does not impose any charges based on miles operated, other than those that might be assessed against fuel consumed in that jurisdiction, on any motor vehicles or trailers which are part of a Nebraska-based fleet.

**Source:** Laws 2005, LB 274, § 41.

**60-342 Owner, defined.**

Owner means a person, firm, or corporation which holds a legal title of a motor vehicle or trailer. If (1) a motor vehicle or trailer is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, (2) a motor vehicle or trailer is subject to a lease of thirty days or more with an immediate right of possession vested in the lessee, or (3) a mortgagor of a motor vehicle or trailer is entitled to possession, then such conditional vendee, lessee, or mortgagor shall be deemed the owner for purposes of the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 42; Laws 2006, LB 853, § 2; Laws 2007, LB239, § 2; Laws 2008, LB756, § 9.

**60-343 Park, defined.**

Park means to stop a motor vehicle or trailer for any length of time, whether occupied or unoccupied.

**Source:** Laws 2005, LB 274, § 43.

**60-344 Parts vehicle, defined.**

Parts vehicle means a vehicle or trailer the title to which has been surrendered (1) in accordance with subdivision (1)(a) of section 60-169 or (2) to any other state by the owner of the vehicle or an insurance company to render the vehicle fit for sale for scrap and parts only.

**Source:** Laws 2005, LB 274, § 44; Laws 2011, LB241, § 5.

**60-345 Passenger car, defined.**

Passenger car means a motor vehicle designed and used to carry ten passengers or less and not used for hire. Passenger car may include a sport utility vehicle.

**Source:** Laws 2005, LB 274, § 45; Laws 2007, LB286, § 28.

**60-346 Proof of financial responsibility, defined.**

Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (1) in the amount of twenty-five thousand dollars because of

bodily injury to or death of one person in any one accident, (2) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

**Source:** Laws 2005, LB 274, § 46.

**60-346.01 Public power district, defined.**

Public power district means a district as defined by section 70-601 receiving annual gross revenue of at least forty million dollars as determined by the Nebraska Power Review Board.

**Source:** Laws 2016, LB783, § 5.

**60-346.02 Reconstructed, defined.**

Reconstructed means the designation of a vehicle which was permanently altered from its original design construction by removing, adding, or substituting major component parts.

**Source:** Laws 2018, LB909, § 49.

**60-346.03 Replica, defined.**

Replica means the designation of a vehicle which resembles a specific manufacturer's make and model that is at least thirty years old and which has been assembled as a kit vehicle.

**Source:** Laws 2018, LB909, § 50.

**60-347 Recreational vehicle, defined.**

Recreational vehicle means a motor vehicle designed for living quarters.

**Source:** Laws 2005, LB 274, § 47.

**60-348 Semitrailer, defined.**

Semitrailer means any trailer so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle. Semitrailer does not include an auxiliary axle or a car toter or tow dolly.

**Source:** Laws 2005, LB 274, § 48; Laws 2018, LB909, § 51.

**60-349 Situs, defined.**

Situs means the tax district where the motor vehicle or trailer is stored and kept for the greater portion of the calendar year. For a motor vehicle or trailer used or owned by a student, the situs is at the place of residence of the student if different from the place at which he or she is attending school.

**Source:** Laws 2005, LB 274, § 49.

**60-350 Snowmobile, defined.**

Snowmobile means a self-propelled vehicle designed to travel on snow or ice or a natural terrain steered by wheels, skis, or runners and propelled by a belt-driven track with or without steel cleats.

**Source:** Laws 2005, LB 274, § 50.



**60-351 Specially constructed vehicle, defined.**

Specially constructed vehicle means a motor vehicle or trailer which was not originally constructed under a distinctive name, make, model, or type by a manufacturer of motor vehicles or trailers. Specially constructed vehicle includes kit vehicle.

**Source:** Laws 2005, LB 274, § 51.

**60-351.01 Sport utility vehicle, defined.**

Sport utility vehicle means a high-performance motor vehicle weighing six thousand pounds or less designed to carry ten passengers or less or designated as a sport utility vehicle by the manufacturer.

**Source:** Laws 2007, LB286, § 29.

**60-352 Suspension of operator's license, defined.**

Suspension of operator's license means the temporary withdrawal by formal action of the department of a person's motor vehicle operator's license for a period specifically designated by the department, if any, and until compliance with all conditions for reinstatement.

**Source:** Laws 2005, LB 274, § 52.

**60-352.01 Temporarily handicapped or disabled person, defined.**

Temporarily handicapped or disabled person means any handicapped or disabled person whose personal mobility is expected to be limited as described in section 60-331.02 for no longer than one year.

**Source:** Laws 2011, LB163, § 21.

**60-353 Total fleet distance, defined.**

Total fleet distance means the distance traveled by a fleet in all jurisdictions during the preceding year.

**Source:** Laws 2005, LB 274, § 53.

**60-354 Trailer, defined.**

Trailer means any device without motive power designed for carrying persons or property and being towed by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle. Trailer does not include an auxiliary axle or a car toter or tow dolly.

**Source:** Laws 2005, LB 274, § 54; Laws 2018, LB909, § 52.

Trailer and truck-tractor are defined by this section. Ashton v. State, 173 Neb. 78, 112 N.W.2d 540 (1961).

**60-355 Transporter, defined.**

Transporter means any person lawfully engaged in the business of transporting motor vehicles or trailers not his or her own solely for delivery thereof (1) by driving singly, (2) by driving in combinations by the towbar, fullmount, or saddlemount method or any combination thereof, or (3) when a truck or truck-tractor tows a trailer.

**Source:** Laws 2005, LB 274, § 55; Laws 2007, LB286, § 30.

**60-356 Truck, defined.**

Truck means a motor vehicle that is designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

**Source:** Laws 2005, LB 274, § 56; Laws 2007, LB286, § 31.

Section 39-6,193, imposing vicarious liability on owners-lessors of trucks for damages by lessees and operators of the leased trucks, is constitutional. *Bridgeford v. U-Haul Co.*, 195 Neb. 308, 238 N.W.2d 443 (1976).

Statute deals only with regulation of motor vehicles upon the highway and definition of word truck therein does not become

part of insurance contract. *Paltani v. Sentinel Life Ins. Co.*, 121 Neb. 447, 237 N.W. 392 (1931).

In replevin for motor truck under chattel mortgage, describing it by wrong serial number, question whether description in mortgage, together with other circumstances, was sufficient to identify truck, was for jury. *State Bank of Omaha v. Murphy*, 110 Neb. 526, 194 N.W. 442 (1923).

**60-357 Truck-tractor, defined.**

Truck-tractor means any motor vehicle designed and used primarily for towing other motor vehicles or trailers and not so constructed as to carry a load other than a part of the weight of the motor vehicle or trailer and load being towed.

**Source:** Laws 2005, LB 274, § 57.

Trailer and truck-tractor are defined by this section. *Ashton v. State*, 173 Neb. 78, 112 N.W.2d 540 (1961).

**60-358 Utility trailer, defined.**

Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less.

**Source:** Laws 2005, LB 274, § 58.

**60-358.01 Utility-type vehicle, defined.**

(1) Utility-type vehicle means any motorized off-highway vehicle which (a) is seventy-four inches in width or less, (b) is not more than one hundred eighty inches, including the bumper, in length, (c) has a dry weight of two thousand pounds or less, and (d) travels on four or more nonhighway tires. Utility-type vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

(2) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

**Source:** Laws 2010, LB650, § 24; Laws 2012, LB1155, § 11; Laws 2013, LB223, § 2; Laws 2014, LB814, § 6.

**60-359 Well-boring apparatus, defined.**

Well-boring apparatus means trucks, truck-tractors, or combinations of trucks or truck-tractors and trailers which are not for hire and are used exclusively to travel to and from the well site including (1) the well rig truck, (2) the boom truck, (3) the water tank truck, and (4) such other devices as are used exclusively for transporting well-boring apparatus to and from the well site including the drill stem, casing, drilling mud, pumps and related equipment, and well-site excavating machinery or equipment.

**Source:** Laws 2005, LB 274, § 59.

**60-360 Well-servicing equipment, defined.**

Well-servicing equipment means equipment used for the (1) care and replacement of down-hole production equipment and (2) restimulation of a well.

**Source:** Laws 2005, LB 274, § 60.

**60-361 Department; powers.**

The department may administer and enforce the International Registration Plan Act and the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 61.

**Cross References**

**International Registration Plan Act**, see section 60-3,192.

**60-362 Registration required; presumption.**

Unless otherwise expressly provided, no motor vehicle shall be operated or parked and no trailer shall be towed or parked on the highways of this state unless the motor vehicle or trailer is registered in accordance with the Motor Vehicle Registration Act. There shall be a rebuttable presumption that any motor vehicle or trailer stored and kept more than thirty days in the state is being operated, parked, or towed on the highways of this state, and such motor vehicle or trailer shall be registered in accordance with the act, from the date of title of the motor vehicle or trailer or, if no transfer in ownership of the motor vehicle or trailer has occurred, from the expiration of the last registration period for which the motor vehicle or trailer was registered. No motor vehicle or trailer shall be eligible for initial registration in this state, except a motor vehicle or trailer registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198, unless the Motor Vehicle Certificate of Title Act has been complied with insofar as the motor vehicle or trailer is concerned.

**Source:** Laws 2005, LB 274, § 62; Laws 2006, LB 765, § 5.

**Cross References**

**Motor Vehicle Certificate of Title Act**, see section 60-101.

Exceptions are made as to requirement of registration. Bank of Keystone v. Kayton, 155 Neb. 79, 50 N.W.2d 511 (1951). United States Constitution. Peterson v. Department of Public Works, 120 Neb. 517, 234 N.W. 95 (1931).

This section requiring owners of motor vehicles to obtain certificates of registration does not violate commerce clause of

**60-363 Registration certificate; duty to carry, exceptions.**

(1) No person shall operate or park a motor vehicle on the highways unless such motor vehicle at all times carries in or upon it, subject to inspection by any peace officer, the registration certificate issued for it.

(2) No person shall tow or park a trailer on the highways unless the registration certificate issued for the trailer or a copy thereof is carried in or upon the trailer or in or upon the motor vehicle that is towing or parking the trailer, subject to inspection by any peace officer, except as provided in subsections (4) and (5) of this section and except fertilizer trailers as defined in section 60-326. The registration certificate for a fertilizer trailer shall be kept at the principal place of business of the owner of the fertilizer trailer.

(3) In the case of a motorcycle other than an autocycle, the registration certificate shall be carried either in plain sight, affixed to the motorcycle, or in the tool bag or some convenient receptacle attached to the motorcycle.

(4) In the case of a motor vehicle or trailer operated by a public power district registered pursuant to section 60-3,228, the registration certificate shall be kept at the principal place of business of the public power district.

(5) Beginning January 1, 2023, in the case of a motor vehicle or trailer operated by a metropolitan utilities district registered pursuant to section 60-3,228, the registration certificate shall be kept at the principal place of business of the metropolitan utilities district.

(6) In the case of an apportionable vehicle registered under section 60-3,198, the registration certificate may be displayed as a legible paper copy or electronically as authorized by the department.

**Source:** Laws 2005, LB 274, § 63; Laws 2010, LB725, § 1; Laws 2014, LB758, § 1; Laws 2017, LB263, § 28; Laws 2018, LB909, § 53; Laws 2019, LB79, § 5.

That person injured was driving unlicensed automobile was no defense to action for highway contractor's negligence. Pratt v. Western Bridge & Const. Co., 116 Neb. 553, 218 N.W. 397 (1928).

### 60-364 Transfer of vehicle; effect on registration.

Upon the transfer of ownership of any motor vehicle or trailer, its registration shall expire.

**Source:** Laws 2005, LB 274, § 64.

Transfer of ownership must be made under Certificate of Title Act. State Farm Mutual Auto Ins. Co. v. Drawbaugh, 159 Neb. 149, 65 N.W.2d 542 (1954).

Even though purchaser receives a formal bill of sale to a motor vehicle conveying absolute title, as between the parties, a subsequently executed conditional sale contract signed by the purchaser creates a valid obligation. American Loan Plan v. Frazell, 135 Neb. 718, 283 N.W. 836 (1939).

Title to automobile can be transferred between living persons only by compliance with statute. In re Estate of Nielsen, 135 Neb. 110, 280 N.W. 246 (1938).

Substantial compliance with sections relating to transfer of ownership of automobile is required to convey title between living persons. Mackechnie v. Lyders, 134 Neb. 682, 279 N.W. 328 (1938).

This section does not provide exclusive method of transferring ownership of motor vehicle as it may be transferred by operation of law. Slagle v. Securities Investment Corp., 131 Neb. 319, 268 N.W. 294 (1936).

Title to automobile can only be transferred between living persons by compliance with statute. In re Estate of Wroth, 125 Neb. 832, 252 N.W. 322 (1934).

Failure of supposed owner to comply with requirements as to transfer of automobile, or to register the same, is a suspicious circumstance, sufficient to put purchaser upon inquiry. Wallich v. Sandlovich, 111 Neb. 318, 196 N.W. 317 (1923).

Whether description of motor truck in chattel mortgage, together with other inquiries suggested by contract itself is sufficient to enable third parties to identify truck, is a question for jury. State Bank of Omaha v. Murphy, 110 Neb. 526, 194 N.W. 442 (1923).

### 60-365 Operation of vehicle without registration; limitation; proof of ownership.

Any person purchasing a motor vehicle or trailer in this state other than from a licensed dealer in motor vehicles or trailers shall not operate or tow such motor vehicle or trailer in this state without registration except as provided in this section. Such purchaser may operate or tow such motor vehicle or trailer without registration for a period not to exceed thirty days. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a bill of sale showing the date of transfer or the certificate of title to such motor vehicle or trailer with assignment thereof duly executed. When such motor vehicle or trailer is purchased from a nonresident, the person in charge of such motor vehicle or trailer shall present upon demand proper evidence of ownership from the state where such motor vehicle or trailer was purchased.

**Source:** Laws 2005, LB 274, § 65; Laws 2008, LB756, § 11; Laws 2012, LB751, § 12.

Pursuant to this section, one can lawfully operate an unregistered motor vehicle for 30 days without display of license plates or in-transit tags after purchasing the vehicle from a nonlicensed seller, provided one can produce the proper documentation upon demand. *State v. Bowers*, 250 Neb. 151, 548 N.W.2d 725 (1996).

**60-366 Nonresident owner; registration; when; reciprocity; avoidance of proper registration; Department of Motor Vehicles or Department of Revenue; powers; notice; determination; appeal; penalty; when.**

(1) Any nonresident owner who desires to register a motor vehicle or trailer in this state shall register in the county where the motor vehicle or trailer is domiciled or where the owner conducts a bona fide business.

(2) A nonresident owner, except as provided in subsections (3) and (4) of this section, owning any motor vehicle or trailer which has been properly registered in the state, country, or other place of which the owner is a resident, and which at all times, when operated or towed in this state, has displayed upon it the license plate or plates issued for such motor vehicle or trailer in the place of residence of such owner, may operate or permit the operation or tow or permit the towing of such motor vehicle or trailer within the state without registering such motor vehicle or trailer or paying any fees to this state.

(3)(a) Except as otherwise provided in subdivision (c) of this subsection, any nonresident owner gainfully employed or present in this state, operating a motor vehicle or towing a trailer in this state, shall register such motor vehicle or trailer in the same manner as a Nebraska resident, after thirty days of continuous employment or presence in this state, unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state.

(b) Except as otherwise provided in subdivision (c) of this subsection, any nonresident owner who operates a motor vehicle or tows a trailer in this state for thirty or more continuous days shall register such motor vehicle or trailer in the same manner as a Nebraska resident unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state.

(c) Any nonresident owner of a film vehicle may operate the film vehicle for up to one year without registering the vehicle in this state.

(4)(a) The Department of Motor Vehicles or the Department of Revenue may determine (i) that a limited liability company, partnership, corporation, or other business entity that is organized under the laws of another state or country and that owns or holds title to a recreational vehicle is a shell company used to avoid proper registration of the recreational vehicle in this state and (ii) that the recreational vehicle is controlled by a Nebraska resident.

(b) Factors that the Department of Motor Vehicles or the Department of Revenue may consider to determine that the limited liability company, partnership, corporation, or other business entity is a shell company used to avoid proper registration of the recreational vehicle in this state include, but are not limited to:

(i) The limited liability company, partnership, corporation, or other business entity lacks a business activity or purpose;

(ii) The limited liability company, partnership, corporation, or other business entity does not maintain a physical location in this state;

(iii) The limited liability company, partnership, corporation, or other business entity does not employ individual persons and provide those persons with Internal Revenue Service Form W-2 wage and tax statements; or

(iv) The limited liability company, partnership, corporation, or other business entity fails to file federal tax returns or fails to file a state tax return in this state.

(c) Factors that the Department of Motor Vehicles or the Department of Revenue may consider to determine that the recreational vehicle is controlled by a Nebraska resident include, but are not limited to:

(i) A Nebraska resident was the initial purchaser of the recreational vehicle;

(ii) A Nebraska resident operated or stored the recreational vehicle in this state for any period of time;

(iii) A Nebraska resident is a member, partner, or shareholder or is otherwise affiliated with the limited liability company, partnership, corporation, or other business entity purported to own the recreational vehicle; or

(iv) A Nebraska resident is insured to operate the recreational vehicle.

(d) If the Department of Motor Vehicles or the Department of Revenue makes the determinations described in subdivision (4)(a) of this section, there is a rebuttable presumption that:

(i) The Nebraska resident in control of the recreational vehicle is the actual owner of the recreational vehicle;

(ii) Such Nebraska resident is required to register the recreational vehicle in this state and is liable for all motor vehicle taxes, motor vehicle fees, and registration fees as provided in the Motor Vehicle Registration Act; and

(iii) The purchase of the recreational vehicle is subject to sales or use tax under section 77-2703.

(e) The Department of Motor Vehicles or the Department of Revenue shall notify the Nebraska resident who is presumed to be the owner of the recreational vehicle that he or she is required to register the recreational vehicle in this state, pay any applicable taxes and fees for proper registration of the recreational vehicle under the Motor Vehicle Registration Act, and pay any applicable sales or use tax due on the purchase under the Nebraska Revenue Act of 1967 no later than thirty days after the date of the notice.

(f)(i) For a determination made by the Department of Motor Vehicles under this subsection, the Nebraska resident who is presumed to be the owner of the recreational vehicle may accept the determination and pay the county treasurer as shown in the notice, or he or she may dispute the determination and appeal the matter. Such appeal shall be filed with the Director of Motor Vehicles within thirty days after the date of the notice or the determination will be final. The director shall appoint a hearing officer who shall hear the appeal and issue a written decision. Such appeal shall be in accordance with the Administrative Procedure Act. Following a final determination in the appeal in favor of the Department of Motor Vehicles or if no further appeal is filed, the Nebraska resident shall owe the taxes and fees determined to be due, together with any costs for the appeal assessed against the owner.

(ii) For a determination made by the Department of Revenue under this subsection, the Nebraska resident who is presumed to be the owner of the

recreational vehicle may appeal the determination made by the Department of Revenue, and such appeal shall be in accordance with section 77-2709.

(g) If the Nebraska resident who is presumed to be the owner of the recreational vehicle fails to pay the motor vehicle taxes, motor vehicle fees, registration fees, or sales or use tax required to be paid under this subsection, he or she shall be assessed a penalty of fifty percent of such unpaid taxes and fees. Such penalty shall be remitted by the county treasurer or the Department of Revenue to the State Treasurer for credit to the Highway Trust Fund.

**Source:** Laws 2005, LB 274, § 66; Laws 2014, LB851, § 4; Laws 2015, LB45, § 1.

#### Cross References

**Administrative Procedure Act**, see section 84-920.  
**Nebraska Revenue Act of 1967**, see section 77-2701.

Right of nonresident owner of motor vehicle to operate under license issued by another state is recognized. *Universal C.I.T. Credit Corp. v. Vogt*, 165 Neb. 611, 86 N.W.2d 771 (1957).

#### **60-367 Nonresident; applicability of act.**

Except as otherwise provided in section 60-366, the provisions of the Motor Vehicle Registration Act relative to registration and display of registration numbers do not apply to a motor vehicle or trailer owned by a nonresident of this state, other than a foreign corporation doing business in this state, if the owner thereof has complied with the provisions of the law of the foreign country, state, territory, or federal district of his or her residence relative to registration of motor vehicles or trailers and the display of registration numbers thereon and conspicuously displays his or her registration numbers as required thereby.

**Source:** Laws 2005, LB 274, § 67; Laws 2014, LB851, § 5.

#### **60-368 Nonresident; nonresident licensed vehicles hauling grain or seasonally harvested products; reciprocity.**

Sections 60-367 and 60-3,112 shall be operative as to motor vehicles or trailers owned by a nonresident of this state only to the extent that under the laws of the foreign country, state, territory, or federal district of his or her residence, like exemptions and privileges are guaranteed to motor vehicles or trailers duly registered under the laws of and owned by residents of this state or to a motor vehicle or trailer duly licensed in the state of residence and operated by a nonresident agricultural worker, certified by the Department of Labor, as engaged in temporary agricultural employment in this state, for a period of not to exceed sixty days.

**Source:** Laws 2005, LB 274, § 68.

#### **60-369 Operation of vehicle without registration; purchase from state or political subdivision; proof of ownership.**

Any purchaser of a motor vehicle or trailer from the State of Nebraska or any political subdivision of the state may operate such motor vehicle or tow such trailer without registration for a period of thirty days. Upon demand of proper authority, satisfactory proof of ownership, which shall be either the certificate of title to such motor vehicle or trailer with assignment thereof duly executed or a bill of sale which describes such motor vehicle or trailer with identification

number, shall be presented by the person in charge of such motor vehicle or trailer for examination.

**Source:** Laws 2005, LB 274, § 69.

Pursuant to this section, one can lawfully operate an unregistered motor vehicle for 30 days without display of license plates or in-transit tags after purchasing the vehicle from a nonli-

censed seller, provided one can produce the proper documentation upon demand. State v. Bowers, 250 Neb. 151, 548 N.W.2d 725 (1996).

**60-370 County number system; alphanumeric system.**

(1) Except as provided in subsection (3) of this section:

(a) In counties having a population of one hundred thousand inhabitants or more according to the most recent federal decennial census, registration of motor vehicles or trailers shall be by the alphanumeric system; and

(b) In all other counties, registration of motor vehicles or trailers shall be, at the option of each county board, by either the alphanumeric system or the county number system.

(2) Counties using the county number system shall show on motor vehicles or trailers licensed therein a county number on the license plate preceding a dash which shall then be followed by the registration number assigned to the motor vehicle or trailer. The county numbers assigned to the counties in Nebraska shall be as follows:

No.	Name of County	No.	Name of County
1	Douglas	2	Lancaster
3	Gage	4	Custer
5	Dodge	6	Saunders
7	Madison	8	Hall
9	Buffalo	10	Platte
11	Otoe	12	Knox
13	Cedar	14	Adams
15	Lincoln	16	Seward
17	York	18	Dawson
19	Richardson	20	Cass
21	Scotts Bluff	22	Saline
23	Boone	24	Cuming
25	Butler	26	Antelope
27	Wayne	28	Hamilton
29	Washington	30	Clay
31	Burt	32	Thayer
33	Jefferson	34	Fillmore
35	Dixon	36	Holt
37	Phelps	38	Furnas
39	Cheyenne	40	Pierce
41	Polk	42	Nuckolls
43	Colfax	44	Nemaha
45	Webster	46	Merrick
47	Valley	48	Red Willow
49	Howard	50	Franklin
51	Harlan	52	Kearney
53	Stanton	54	Pawnee
55	Thurston	56	Sherman
57	Johnson	58	Nance
59	Sarpy	60	Frontier
61	Sheridan	62	Greeley
63	Boyd	64	Morrill



65	Box Butte	66	Cherry
67	Hitchcock	68	Keith
69	Dawes	70	Dakota
71	Kimball	72	Chase
73	Gosper	74	Perkins
75	Brown	76	Dundy
77	Garden	78	Deuel
79	Hayes	80	Sioux
81	Rock	82	Keya Paha
83	Garfield	84	Wheeler
85	Banner	86	Blaine
87	Logan	88	Loup
89	Thomas	90	McPherson
91	Arthur	92	Grant
93	Hooker		

(3) Counties using the alphanumeric system shall show on the license plates of motor vehicles or trailers licensed therein a combination of three letters followed by a combination of three numerals. The department may adopt and promulgate rules and regulations creating alphanumeric distinctions on the license plates based upon the registration of the motor vehicle or trailer and designating plate types that shall display county numbers on a statewide basis, taking into consideration cost, the need for uniformity, factors applicable to the production, distribution, and use of specific plate types, and any other factors consistent with the purposes of the Motor Vehicle Registration Act that the director deems relevant.

**Source:** Laws 2005, LB 274, § 70; Laws 2016, LB811, § 1.

**60-371 Exemption from civil liability.**

The county and the county treasurer and his or her employees or agents shall be exempt from all civil liability when carrying out powers and duties delegated under the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 71; Laws 2012, LB801, § 53.

**60-372 Vehicle Title and Registration System; agent of county treasurer; appointment.**

(1) Each county shall issue and file registration certificates using the Vehicle Title and Registration System which shall be provided and maintained by the department.

(2) The county treasurer may appoint an agent to issue registration certificates and to accept the payment of taxes and fees as provided in the Motor Vehicle Registration Act, upon approval of the county board. The agent shall furnish a bond in such amount and upon such conditions as determined by the county board.

**Source:** Laws 2005, LB 274, § 72; Laws 2012, LB801, § 54; Laws 2017, LB263, § 29.

**60-373 Operation of vehicle without registration; dealer; employee or agent; licensed manufacturer; conditions.**

(1) Each licensed motor vehicle dealer or trailer dealer as defined in sections 60-1401.26 and 60-1401.37, respectively, doing business in this state, in lieu of

registering each motor vehicle or trailer which such dealer owns of a type otherwise required to be registered, or any full-time or part-time employee or agent of such dealer may, if the motor vehicle or trailer displays dealer number plates:

(a) Operate or tow the motor vehicle or trailer upon the highways of this state solely for purposes of transporting, testing, demonstrating, or use in the ordinary course and conduct of business as a motor vehicle or trailer dealer. Such use may include personal or private use by the dealer and personal or private use by any bona fide employee, if the employee can be verified by payroll records maintained at the dealership as ordinarily working more than thirty hours per week or fifteen hundred hours per year at the dealership;

(b) Operate or tow the motor vehicle or trailer upon the highways of this state for transporting industrial equipment held by the licensee for purposes of demonstration, sale, rental, or delivery; or

(c) Sell the motor vehicle or trailer.

(2) Each licensed manufacturer as defined in section 60-1401.24 which actually manufactures or assembles motor vehicles or trailers within this state, in lieu of registering each motor vehicle or trailer which such manufacturer owns of a type otherwise required to be registered, or any employee of such manufacturer may operate or tow the motor vehicle or trailer upon the highways of this state solely for purposes of transporting, testing, demonstrating to prospective customers, or use in the ordinary course and conduct of business as a motor vehicle or trailer manufacturer, upon the condition that any such motor vehicle or trailer display thereon, in the manner prescribed in section 60-3,100, dealer number plates as provided for in section 60-3,114.

(3) In no event shall such plates be used on motor vehicles or trailers hauling other than automotive or trailer equipment, complete motor vehicles, or trailers which are inventory of such licensed dealer or manufacturer unless there is issued by the department a special permit specifying the hauling of other products. This section shall not be construed to allow a dealer to operate a motor vehicle or trailer with dealer number plates for the delivery of parts inventory. A dealer may use such motor vehicle or trailer to pick up parts to be used for the motor vehicle or trailer inventory of the dealer.

**Source:** Laws 2005, LB 274, § 73; Laws 2010, LB816, § 7; Laws 2017, LB346, § 1.

Dealer need not apply for certificate of title for motor vehicle in stock or acquired for stock purposes. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

Licensed automobile dealer is not required to obtain a new certificate of title in his name. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

**60-374 Operation of vehicle without registration; prospective buyer; conditions; special permit; fee.**

Motor vehicles or trailers owned by a dealer and bearing dealer number plates may be operated or towed upon the highways for demonstration purposes by any prospective buyer thereof for a period of forty-eight hours. Motor vehicles or trailers owned and held for sale by a dealer and bearing such dealer number plates may be operated or towed upon the highways for a period of forty-eight hours as service loaner vehicles by customers having their vehicles repaired by the dealer. Upon delivery of such motor vehicle or trailer to such prospective buyer for demonstration purposes or to a service customer, the dealer shall deliver to the prospective buyer or service customer a card or

certificate giving the name and address of the dealer, the name and address of the prospective buyer or service customer, and the date and hour of such delivery and the products to be hauled, if any, under a special permit. The special permit and card or certificate shall be in such form as shall be prescribed by the department and shall be carried by such prospective buyer or service customer while operating such motor vehicle or towing such trailer. The department shall charge ten dollars for each special permit issued under this section.

**Source:** Laws 2005, LB 274, § 74.

**60-375 Operation of vehicle without registration; finance company; repossession plates; fee.**

(1) A finance company which is licensed to do business in this state may, in lieu of registering each motor vehicle or trailer repossessed, upon the payment of a fee of ten dollars, make an application to the department for a repossession registration certificate and one repossession license plate. Additional pairs of repossession certificates and repossession license plates may be procured for a fee of ten dollars each. Repossession license plates may be used only for operating or towing motor vehicles or trailers on the highways for the purpose of repossession, demonstration, and disposal of such motor vehicles or trailers. The repossession certificate shall be displayed on demand for any motor vehicle or trailer which has a repossession license plate. A finance company shall be entitled to a dealer license plate only in the event such company is licensed as a motor vehicle dealer or trailer dealer under the Motor Vehicle Industry Regulation Act.

(2) Repossession license plates shall be prefixed with a large letter R and be serially numbered from 1 to distinguish them from each other. Such license plates shall be displayed only on the rear of a repossessed motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 75; Laws 2010, LB816, § 8.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-376 Operation of vehicle without registration; In Transit sticker; records required; proof of ownership.**

Subject to all the provisions of law relating to motor vehicles and trailers not inconsistent with this section, any motor vehicle dealer or trailer dealer who is regularly engaged within this state in the business of buying and selling motor vehicles and trailers, who regularly maintains within this state an established place of business, and who desires to effect delivery of any motor vehicle or trailer bought or sold by him or her from the point where purchased or sold to points within or outside this state may, solely for the purpose of such delivery by himself or herself, his or her agent, or a bona fide purchaser, operate such motor vehicle or tow such trailer on the highways of this state without charge or registration of such motor vehicle or trailer. A sticker shall be displayed on the front and rear windows or the rear side windows of such motor vehicle, except an autocycle or a motorcycle, and displayed on the front and rear of each such trailer. On the sticker shall be plainly printed in black letters the words In Transit. One In Transit sticker shall be displayed on an autocycle or a motorcycle, which sticker may be one-half the size required for other motor

vehicles. Such stickers shall include a registration number, which registration number shall be different for each sticker or pair of stickers issued, and the contents of such sticker and the numbering system shall be as prescribed by the department. Each dealer issuing such stickers shall keep a record of the registration number of each sticker or pair of stickers on the invoice of such sale. Such sticker shall allow such owner to operate the motor vehicle or tow such trailer for a period of thirty days in order to effect proper registration of the new or used motor vehicle or trailer. When any person, firm, or corporation has had a motor vehicle or trailer previously registered and license plates assigned to such person, firm, or corporation, such owner may operate the motor vehicle or tow such trailer for a period of thirty days in order to effect transfer of plates to the new or used motor vehicle or trailer. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a duly executed bill of sale therefor or other satisfactory evidence of the right of possession by such person of such motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 76; Laws 2008, LB756, § 12; Laws 2015, LB231, § 10.

A vehicle may be operated for 15 days without being registered pursuant to section 60-302, provided that it properly displays "In Transit" decals. *State v. Childs*, 242 Neb. 426, 495 N.W.2d 475 (1993).

This section provides for in-transit tags to be issued by a licensed dealer; it does not allow private sellers to issue in-transit tags. Thus, such handwritten tags are not entitled to the presumption of compliance that we have afforded dealer-issued tags. The law enforcement officer has reasonable suspicion to

stop a motor vehicle when he or she sees such vehicle being operated on the public streets without license plates and without dealer-issued in-transit tags. Upon demand, the driver of such vehicle must show documents proving compliance with motor vehicle registration laws. *State v. Kling*, 8 Neb. App. 631, 599 N.W.2d 240 (1999).

"Display" of in-transit decals as described in this section logically implies a display of the decal which is visible. *State v. Reiter*, 3 Neb. App. 153, 524 N.W.2d 575 (1994).

### **60-377 Business of equipping, modifying, repairing, or detailing; registration and plates; fee.**

Any person, firm, or corporation in this state engaged in the business of equipping, modifying, repairing, or detailing motor vehicles or trailers which are not registered and which are not owned by such person, firm, or corporation shall make an application to the department for a registration certificate and one license plate. Such application shall be accompanied by a fee of thirty dollars. Additional pairs of certificates and license plates may be procured for a fee of thirty dollars each. Such license plates shall be designed by the department and shall bear a mark and be serially numbered so as to be distinguished from each other. Such license plates may be used solely for the purpose of equipping, modifying, repairing, detailing, and delivering such motor vehicles or trailers. Upon demand of proper authorities, the operator of such motor vehicle shall present a written statement from the owner authorizing operation of such motor vehicle or towing such trailer.

**Source:** Laws 2005, LB 274, § 77.

### **60-378 Transporter plates; fee; records.**

(1) Any transporter doing business in this state may, in lieu of registering each motor vehicle or trailer which such transporter is transporting, upon payment of a fee of ten dollars, apply to the department for a transporter's certificate and one transporter license plate. Additional pairs of transporter certificates and transporter license plates may be procured for a fee of ten dollars each. Transporter license plates shall be displayed (a) upon the motor vehicle or trailer being transported or (b) upon a properly registered truck or

truck-tractor which is a work or service vehicle in the process of towing a trailer which is itself being delivered by the transporter, and such registered truck or truck-tractor shall also display a transporter plate upon the front thereof. The applicant for a transporter plate shall keep for three years a record of each motor vehicle or trailer transported by him or her under this section, and such record shall be available to the department for inspection. Each applicant shall file with the department proof of his or her status as a bona fide transporter.

(2) Transporter license plates may be the same size as license plates issued for motorcycles other than autocycles, shall bear thereon a mark to distinguish them as transporter plates, and shall be serially numbered so as to distinguish them from each other. Such license plates may only be displayed upon the front of a driven motor vehicle of a lawful combination or upon the front of a motor vehicle driven singly or upon the rear of a trailer being towed.

**Source:** Laws 2005, LB 274, § 78; Laws 2007, LB286, § 32; Laws 2018, LB909, § 54; Laws 2019, LB699, § 1.

**60-379 Boat dealer trailer plate; fee.**

Any boat dealer when transporting a boat which is part of the inventory of the boat dealer on a trailer required to be registered may annually, in lieu of registering the trailer and upon application to the department and payment of a fee of ten dollars, obtain a certificate and a license plate. The plate may be displayed on any trailer owned by the boat dealer when the trailer is transporting such a boat. The license plate shall be of a type designed by the department and so numbered as to distinguish one plate from another.

**Source:** Laws 2005, LB 274, § 79.

**60-380 Motor vehicle or trailer owned by dealer; presumption.**

Any motor vehicle or trailer owned by a dealer licensed under the Motor Vehicle Industry Regulation Act and bearing other than dealer license plates shall be conclusively presumed not to be a part of the dealer's inventory and not for demonstration or sale and therefor not eligible for any exemption from taxes or fees applicable to motor vehicles or trailers with dealer license plates.

**Source:** Laws 2005, LB 274, § 80; Laws 2010, LB816, § 9.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-381 Manufacturer or dealer; branch offices; separate registration; dealer's plates; use.**

Whenever a manufacturer or dealer licensed under the Motor Vehicle Industry Regulation Act maintains a branch or subagency, the manufacturer or dealer shall apply for a separate registration for such branch or subagency and shall pay therefor the fees provided in section 60-3,114 for the registration of motor vehicles or trailers owned by or under the control of the manufacturer or dealer, and the determination of the department upon the question whether any establishment constitutes a branch or subagency, within the intent of this section, shall be conclusive. No manufacturer, dealer, or employee of a manufacturer or dealer shall cause or permit the display or other use of any license plate or certificate of registration which has been issued to such manufacturer

or dealer except upon motor vehicles or trailers owned by such manufacturer or dealer.

**Source:** Laws 2005, LB 274, § 81; Laws 2010, LB816, § 10.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-382 Nonresident owners; thirty-day license plate; application; fee; certificate; contents.**

(1) Any person, not a resident of this state, who is the owner of a motor vehicle or trailer required to be registered in this state or any other state may, for the sole purpose of delivering, or having delivered, such motor vehicle or trailer, to his or her home or place of business in another state, apply for and obtain a thirty-day license plate which shall allow such person or his or her agent or employee to operate such motor vehicle or trailer upon the highways under conditions set forth in subsection (2) of this section, without obtaining a certificate of title to such motor vehicle in this state.

(2) Applications for such thirty-day license plate shall be made to the county treasurer of the county where such motor vehicle or trailer was purchased or acquired. Upon receipt of such application and payment of the fee of five dollars, the county treasurer shall issue to such applicant a thirty-day license plate, which shall be devised by the director, and evidenced by the official certificate of the county treasurer, which certificate shall state the name of the owner and operator of the motor vehicle or trailer so licensed, the description of such motor vehicle or trailer, the place in Nebraska where such motor vehicle or trailer was purchased or otherwise acquired, the place where delivery is to be made, and the time, not to exceed thirty days from date of purchase or acquisition of the motor vehicle or trailer, during which time such license plate shall be valid.

(3) Nonresident owner thirty-day license plates issued under this section shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

**Source:** Laws 2005, LB 274, § 82; Laws 2012, LB801, § 55.

**60-383 Repealed. Laws 2015, LB 45, § 4.**

**60-383.01 Minitruck; registration; fee.**

For the registration of every minitruck, the fee shall be fifteen dollars.

**Source:** Laws 2010, LB650, § 27.

**60-383.02 Low-speed vehicle; registration; fee.**

For the registration of every low-speed vehicle, the fee shall be fifteen dollars.

**Source:** Laws 2011, LB289, § 16.

**60-384 Nonresident carnival operator; thirty-day permit; fees; reciprocity.**

Upon receipt of an application duly verified, a nonresident carnival operator shall be issued a thirty-day carnival operators' permit to operate in Nebraska upon the payment of the following fees: For the gross vehicle weight of sixteen thousand pounds or less, ten dollars; for more than sixteen thousand pounds and not more than twenty-eight thousand pounds, fifteen dollars; for more than

twenty-eight thousand pounds and not more than forty thousand pounds, twenty dollars; and for more than forty thousand pounds and not more than seventy-three thousand two hundred eighty pounds, twenty-five dollars, except that such a permit shall be issued only to out-of-state operators when the jurisdiction in which the motor vehicle and trailer is registered grants reciprocity to Nebraska. Such fees shall be paid to the county treasurer or persons designated by the director, who shall have authority to issue the permit when the applicant is eligible and pays the required fee. All fees collected under this section shall be paid into the state treasury and by the State Treasurer credited to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 84; Laws 2012, LB801, § 56.

#### **60-385 Application; situs.**

Every owner of a motor vehicle or trailer required to be registered shall make application for registration to the county treasurer of the county in which the motor vehicle or trailer has situs. The application shall be by any means designated by the department. An approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 may submit such application electronically to the appropriate county treasurer or the department. A salvage branded certificate of title and a nontransferable certificate of title provided for in section 60-170 shall not be valid for registration purposes.

**Source:** Laws 2005, LB 274, § 85; Laws 2006, LB 765, § 6; Laws 2007, LB286, § 33; Laws 2012, LB801, § 57; Laws 2017, LB263, § 30.

#### **60-386 Application; contents.**

(1) Each new application shall contain, in addition to other information as may be required by the department, the name and residential and mailing address of the applicant and a description of the motor vehicle or trailer, including the color, the manufacturer, the identification number, the United States Department of Transportation number if required by 49 C.F.R. 390.5 through 390.21, as such regulations existed on January 1, 2021, and the weight of the motor vehicle or trailer required by the Motor Vehicle Registration Act. For trailers which are not required to have a certificate of title under section 60-137 and which have no identification number, the assignment of an identification number shall be required and the identification number shall be issued by the county treasurer or department. With the application the applicant shall pay the proper registration fee and shall state whether the motor vehicle is propelled by alternative fuel and, if alternative fuel, the type of fuel. The application shall also contain a notification that bulk fuel purchasers may be subject to federal excise tax liability. The department shall include such notification in the notices required by section 60-3,186.

(2) In addition to the information required under subsection (1) of this section, the application for registration shall contain (a)(i) the full legal name as defined in section 60-468.01 of each owner or (ii) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (b)(i) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (ii) if any owner is a business entity, a nonprofit organization,

an estate, a trust, or a church-controlled organization, its tax identification number.

**Source:** Laws 2005, LB 274, § 86; Laws 2011, LB289, § 17; Laws 2012, LB801, § 58; Laws 2013, LB207, § 1; Laws 2015, LB642, § 4; Laws 2016, LB929, § 3; Laws 2017, LB263, § 31; Laws 2018, LB909, § 55; Laws 2019, LB79, § 6; Laws 2019, LB270, § 14; Laws 2020, LB944, § 14; Laws 2021, LB149, § 5.  
Effective date August 28, 2021.

### **60-387 Proof of financial responsibility required.**

An application for registration of a motor vehicle shall be accompanied by proof of financial responsibility or evidence of insurance covering the motor vehicle. Proof of financial responsibility shall be evidenced by a copy of proof of financial responsibility filed pursuant to subdivision (2), (3), or (4) of section 60-528 bearing the seal of the department. Evidence of insurance shall give the effective dates of the automobile liability policy, which dates shall be evidence that the coverage is in effect on and following the date of registration, and shall designate, by explicit description or by appropriate reference, all motor vehicles covered. Evidence of insurance in the form of a certificate of insurance for fleet vehicles may include, as an appropriate reference, a designation that the insurance coverage is applicable to all vehicles owned by the named insured, or wording of similar effect, in lieu of an explicit description. Proof of financial responsibility also may be evidenced by (1) a check by the department or its agents of the motor vehicle insurance database created under section 60-3,136 or (2) any other automated or electronic means as prescribed or developed by the department. For purposes of this section, fleet means a group of at least five vehicles that belong to the same owner.

**Source:** Laws 2005, LB 274, § 87; Laws 2007, LB286, § 34.

Recent legislative enactments to make automobile liability insurance compulsory could not be read retroactively in violation of vested rights under the policy, where the enactments were not in force when the policy was issued or when the loss occurred. *Glockel v. State Farm Mut. Auto. Ins. Co.*, 224 Neb. 598, 400 N.W.2d 250 (1987).

#### **60-387.01 Evidence of insurance; display as electronic image.**

Evidence of insurance may be displayed as an electronic image on an electronic device. If a person displays evidence of insurance on an electronic device, the person is not consenting for law enforcement to access other contents of the device. Whenever a person presents an electronic device for purposes of evidence of insurance, the person presenting the electronic device assumes liability for any damage to the device.

**Source:** Laws 2014, LB816, § 3.

### **60-388 Collection of taxes and fees required.**

No county treasurer shall receive or accept an application or registration fee or issue any registration certificate for any motor vehicle or trailer without collection of the taxes and the fees imposed in sections 60-3,185, 60-3,190, and 77-2703 and any other applicable taxes and fees upon such motor vehicle or trailer. If applicable, the applicant shall furnish proof of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by the Internal Revenue Code, 26 U.S.C. 4481.

**Source:** Laws 2005, LB 274, § 88; Laws 2012, LB801, § 59.



Cited in connection with separate listing and assessing of motor vehicles. *Peterson v. Hancock*, 166 Neb. 637, 90 N.W.2d 298 (1958).

**60-389 Registration number; trailer identification tags; assignment.**

Upon the filing of such application, the department shall, upon registration, assign to such motor vehicle or trailer a distinctive registration number in the form of a license plate. Beginning on the implementation date designated by the director pursuant to subsection (4) of section 60-1508, for trailers which are not required to have a certificate of title under section 60-137 and which have an identification number issued by the county treasurer or department under section 60-386, trailer identification tags shall be supplied by the department and shall be required to be affixed to the trailer after issuance. Upon sale or transfer of any such motor vehicle or trailer, such number may be canceled or may be reassigned to another motor vehicle or trailer, at the option of the department, subject to the provisions of the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 89; Laws 2018, LB909, § 56.

**60-390 Certificate of registration; contents.**

The certificate of registration shall contain upon the face thereof the name of the registered owner of the motor vehicle or trailer, his or her residential mailing address, a description of the motor vehicle or trailer as set forth in the application for registration, and whether alternative fuel was used to propel the motor vehicle and, if so, the type of fuel. The certificate of registration shall have and contain the identical registration number denoted on the license plate in connection with which such certificate of registration is issued and shall be valid only for the registration period for which it is issued. On the back of the certificate, the certificate of registration shall include a statement in boldface print that an automobile liability policy or proof of financial responsibility is required in Nebraska. By paying the required registration fees, every person whose name appears on the registration of the motor vehicle or trailer certifies that a current and effective automobile liability policy or proof of financial responsibility will be maintained for the motor vehicle or trailer at the time of registration and while the motor vehicle or trailer is operated on a highway of this state and that he or she will also provide a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility for the motor vehicle or trailer upon demand.

**Source:** Laws 2005, LB 274, § 90.

Failure of supposed owner to register automobile as required by law, or to comply with requirements as to transfer, was a suspicious circumstance, sufficient to put purchaser on inquiry. *Wallich v. Sandlovich*, 111 Neb. 318, 196 N.W. 317 (1923).

**60-391 Combined certificate and receipt for fees; county treasurer; report; contents.**

The county treasurer shall issue a combined certificate and receipt for all fees received for the registration of motor vehicles or trailers to the applicant for registration and forward an electronic copy of the combined application and receipt to the department in a form prescribed by the department. Each county treasurer shall make a report to the department of the number of original registrations of motor vehicles or trailers registered in the rural areas of the county and of the number of original registrations of motor vehicles or trailers registered in each incorporated city and village in the county during each

month, on or before the twenty-fifth day of the succeeding month. The department shall prescribe the form of such report. When any county treasurer fails to file such report, the department shall notify the county board of such county and the Director of Administrative Services who shall immediately suspend any payments to such county for highway purposes until the required reports are submitted.

**Source:** Laws 2005, LB 274, § 91; Laws 2012, LB801, § 60.

**60-392 Renewal of registration; license plates; validation decals; registration period; expiration.**

(1) Registration may be renewed annually in a manner designated by the department and upon payment of the same fee as provided for the original registration. On making an application for renewal, the registration certificate for the preceding registration period or renewal notice or other evidence designated by the department shall be presented with the application. A person may renew his or her annual registration up to thirty days prior to the date of expiration.

(2) The certificate of registration and license plates issued by the department shall be valid during the registration period for which they are issued, and when validation decals issued pursuant to section 60-3,101 have been affixed to the license plates, the plates shall also be valid for the registration period designated by such validation decals. If a person renews his or her annual registration up to thirty days prior to the date of expiration, the registration shall be valid for such time period as well.

(3) The registration period for motor vehicles and trailers required to be registered as provided in section 60-362 shall expire on the first day of the month one year from the month of issuance, and renewal shall become due on such day and shall become delinquent on the first day of the following month.

(4) Subsections (1) through (3) of this section do not apply to dealer's license plates, repossession plates, and transporter plates as provided in sections 60-373, 60-375, 60-378, and 60-379, which plates shall be issued for a calendar year.

(5) The registration period for apportioned vehicles as provided in section 60-3,198 shall expire December 31 of each year and shall become delinquent February 1 of the following year.

**Source:** Laws 2005, LB 274, § 92; Laws 2006, LB 789, § 1.

**60-393 Multiple vehicle registration.**

Any owner who has two or more motor vehicles or trailers required to be registered under the Motor Vehicle Registration Act may register all such motor vehicles or trailers on a calendar-year basis or on an annual basis for the same registration period beginning in a month chosen by the owner. When electing to establish the same registration period for all such motor vehicles or trailers, the owner shall pay the registration fee, the motor vehicle tax imposed in section 60-3,185, the motor vehicle fee imposed in section 60-3,190, and the alternative fuel fee imposed in section 60-3,191 on each motor vehicle for the number of months necessary to extend its current registration period to the registration period under which all such motor vehicles or trailers will be registered. Credit shall be given for registration paid on each motor vehicle or

trailer when the motor vehicle or trailer has a later expiration date than that chosen by the owner except as otherwise provided in sections 60-3,121, 60-3,122.02, 60-3,122.04, 60-3,128, 60-3,224, 60-3,227, 60-3,233, 60-3,235, 60-3,238, 60-3,240, 60-3,242, 60-3,244, 60-3,246, 60-3,248, 60-3,250, 60-3,252, 60-3,254, 60-3,256, and 60-3,258. Thereafter all such motor vehicles or trailers shall be registered on an annual basis starting in the month chosen by the owner.

**Source:** Laws 2005, LB 274, § 93; Laws 2007, LB570, § 4; Laws 2011, LB289, § 18; Laws 2014, LB383, § 2; Laws 2015, LB220, § 2; Laws 2016, LB474, § 4; Laws 2017, LB46, § 2; Laws 2017, LB263, § 32; Laws 2019, LB138, § 4; Laws 2019, LB356, § 3; Laws 2020, LB944, § 15; Laws 2021, LB166, § 2; Laws 2021, LB317, § 2.

Effective date August 28, 2021.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB166, section 2, with LB317, section 2, to reflect all amendments.

**60-394 Registration; certain name and address changes; fee.**

(1) Registration which is in the name of one spouse may be transferred to the other spouse for a fee of one dollar and fifty cents.

(2) So long as one registered name on a registration of a noncommercial motor vehicle or trailer remains the same, other names may be deleted therefrom or new names added thereto for a fee of one dollar and fifty cents.

(3) At any time prior to annual renewal beginning January 1, 2019, an owner may voluntarily update his or her address on the registration certificate upon payment of a fee of one dollar and fifty cents.

**Source:** Laws 2005, LB 274, § 94; Laws 2017, LB263, § 33.

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

(1) Except as otherwise provided in subsection (2) of this section and sections 60-3,121, 60-3,122.02, 60-3,122.04, 60-3,128, 60-3,224, 60-3,227, 60-3,231, 60-3,233, 60-3,235, 60-3,238, 60-3,240, 60-3,242, 60-3,244, 60-3,246, 60-3,248, 60-3,250, 60-3,252, 60-3,254, 60-3,256, and 60-3,258, the registration shall expire and the registered owner or lessee may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals and by either making application on a form prescribed by the department to the county treasurer of the occurrence of an event described in subdivisions (a) through (e) of this subsection or, in the case of a change in situs, displaying to the county treasurer the registration certificate of such other state as evidence of a change in situs, receive a refund of that part of the unused fees and taxes on motor vehicles or trailers based on the number of unexpired months remaining in the registration period from the date of any of the following events:

- (a) Upon transfer of ownership of any motor vehicle or trailer;
- (b) In case of loss of possession because of fire, natural disaster, theft, dismantlement, or junking;
- (c) When a salvage branded certificate of title is issued;
- (d) Whenever a type or class of motor vehicle or trailer previously registered is subsequently declared by legislative act or court decision to be illegal or

ineligible to be operated or towed on the public roads and no longer subject to registration fees, the motor vehicle tax imposed in section 60-3,185, the motor vehicle fee imposed in section 60-3,190, and the alternative fuel fee imposed in section 60-3,191;

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

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

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

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

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

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

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

(7) If a motor vehicle or trailer was reported stolen under section 60-178, a refund under this section shall not be reduced for a lost plate charge and a credit under this section may be reduced for a lost plate charge but the applicant shall not be required to pay the plate fee for new plates.

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

**Source:** Laws 2005, LB 274, § 95; Laws 2007, LB286, § 35; Laws 2007, LB570, § 5; Laws 2009, LB175, § 1; Laws 2011, LB289, § 19; Laws 2012, LB801, § 61; Laws 2014, LB383, § 3; Laws 2015, LB220, § 3; Laws 2016, LB474, § 5; Laws 2017, LB46, § 3; Laws 2017, LB263, § 34; Laws 2018, LB909, § 57; Laws 2019, LB138, § 5; Laws 2019, LB356, § 4; Laws 2020, LB944, § 16; Laws 2021, LB166, § 3; Laws 2021, LB317, § 3.  
Effective date August 28, 2021.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB166, section 3, with LB317, section 3, to reflect all amendments.

**60-396 Credit of fees; vehicle disabled or removed from service.**

Whenever the registered owner files an application with the county treasurer showing that a motor vehicle, trailer, or semitrailer is disabled and has been removed from service, the registered owner may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of such registration certificate or certificates, license plates, or validation decals, then by making an affidavit to the county treasurer of such disablement and removal from service, receive a credit for a portion of the registration fee from the fee deposited with the State Treasurer at the time of registration based upon the number of unexpired months remaining in the registration year except as otherwise provided in sections 60-3,121, 60-3,122.02, 60-3,122.04, 60-3,128, 60-3,224, 60-3,227, 60-3,233, 60-3,235, 60-3,238, 60-3,240, 60-3,242, 60-3,244, 60-3,246, 60-3,248, 60-3,250, 60-3,252, 60-3,254, 60-3,256, and 60-3,258. The owner shall also receive a credit for the unused portion of the motor vehicle tax and fee based upon the number of unexpired months remaining in the registration year. When the owner registers a replacement motor vehicle, trailer, or semitrailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle, trailer, or semitrailer. When no such replacement motor vehicle, trailer, or semitrailer is so registered, the county treasurer shall determine the amount, if any, of the allowable credit for the registration fee and the motor vehicle tax and fee and issue a credit certificate to the owner. When such motor vehicle, trailer, or semitrailer is removed from service within the same month in which it was registered, no credits shall be allowed for such month. The credits may be applied against taxes and fees for new or replacement motor vehicles, trailers, or semitrailers incurred within one year after cancellation of registration of the motor vehicle, trailer, or semitrailer for which the credits were allowed. When any such motor vehicle, trailer, or semitrailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

**Source:** Laws 2005, LB 274, § 96; Laws 2007, LB570, § 6; Laws 2012, LB801, § 62; Laws 2014, LB383, § 4; Laws 2015, LB220, § 4; Laws 2016, LB474, § 6; Laws 2017, LB46, § 4; Laws 2017, LB263, § 35; Laws 2019, LB138, § 6; Laws 2019, LB356, § 5; Laws 2020, LB944, § 17; Laws 2021, LB166, § 4; Laws 2021, LB317, § 4; Laws 2021, LB509, § 6.  
Effective date August 28, 2021.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB166, section 4, with LB317, section 4, and LB509, section 6, to reflect all amendments.

#### **60-397 Refund or credit; salvage branded certificate of title.**

If a motor vehicle or trailer has a salvage branded certificate of title issued as a result of an insurance company acquiring the motor vehicle or trailer through a total loss settlement, the prior owner of the motor vehicle or trailer who is a party to the settlement may receive a refund or credit of unused fees and taxes by (1) filing an application with the county treasurer within sixty days after the date of the settlement stating that title to the motor vehicle or trailer was transferred as a result of the settlement and (2) returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of the registration certificate, license plates, or

validation decals, filing an affidavit with the county treasurer regarding the transfer of title due to the settlement and the unavailability of the certificate, license plates, or validation decals. The owner may receive a refund or credit of the registration fees and motor vehicle taxes and fees for the unexpired months remaining in the registration year determined based on the date when the motor vehicle or trailer was damaged and became unavailable for service. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer shall refund the unused registration fees. If the motor vehicle or trailer was damaged and became unavailable for service during the same month in which it was registered, no refund or credit shall be allowed for such month. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

**Source:** Laws 2005, LB 274, § 97; Laws 2007, LB286, § 36; Laws 2012, LB801, § 63.

**60-398 Nonresident; refund; when allowed.**

A nonresident may, if he or she applies within ninety days from his or her original registration date and surrenders the registration certificate and license plates which were assigned to him or her, receive from the county treasurer, or the department if registration was pursuant to section 60-3,198, a refund in the amount of fifty percent of the original license fee, fifty percent of the motor vehicle tax imposed in section 60-3,185, and fifty percent of the motor vehicle fee imposed in section 60-3,190, except that no refunds shall be made on any license surrendered after the ninth month of the registration period for which the motor vehicle or trailer was registered.

**Source:** Laws 2005, LB 274, § 98; Laws 2012, LB801, § 64.

**60-399 Display of plates; requirements.**

(1) Except as otherwise specifically provided, no person shall operate or park or cause to be operated or parked a motor vehicle or tow or park or cause to be towed or parked a trailer on the highways unless such motor vehicle or trailer has displayed the proper number of plates as required in the Motor Vehicle Registration Act.

In each registration period in which new license plates are not issued, previously issued license plates shall have affixed thereto the validation decals issued pursuant to section 60-3,101. In all cases such license plates shall be securely fastened in an upright position to the motor vehicle or trailer so as to prevent such plates from swinging and at a minimum distance of twelve inches from the ground to the bottom of the license plate. No person shall attach to or display on such motor vehicle or trailer any (a) license plate or registration certificate other than as assigned to it for the current registration period, (b) fictitious or altered license plates or registration certificate, (c) license plates or registration certificate that has been canceled by the department, or (d) license plates lacking current validation decals.

(2) All letters, numbers, printing, writing, and other identification marks upon such plates and certificate shall be kept clear and distinct and free from grease, dust, or other blurring matter, so that they shall be plainly visible at all times during daylight and under artificial light in the nighttime.

**Source:** Laws 2005, LB 274, § 99.

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).

"Display" of license plates as described in this section logically implies a display of the license plate which is visible. *State v. Reiter*, 3 Neb. App. 153, 524 N.W.2d 575 (1994).

Officer properly stopped vehicle bearing both Missouri license plates and in transit sticker, and when driver failed to produce identification, and upon noticing scratches around vehicle identification number checked to determine whether vehicle was stolen, upon learning it was, was justified in making arrest. *United States v. Harris*, 528 F.2d 1327 (8th Cir. 1975).

**60-3,100 License plates; issuance; license decal; display; additional registration fee.**

(1) The department shall issue to every person whose motor vehicle or trailer is registered one or two fully reflectorized license plates upon which shall be displayed (a) the registration number consisting of letters and numerals assigned to such motor vehicle or trailer in figures not less than two and one-half inches nor more than three inches in height and (b) also the word Nebraska suitably lettered so as to be attractive. The license plates shall be of a color designated by the director. The color of the plates shall be changed each time the license plates are changed. Each time the license plates are changed, the director shall secure competitive bids for materials pursuant to sections 81-145 to 81-162. Autocycle, motorcycle, minitruck, low-speed vehicle, and trailer license plate letters and numerals may be one-half the size of those required in this section.

(2)(a) Except as otherwise provided in this subsection, two license plates shall be issued for every motor vehicle.

(b) One license plate shall be issued for (i) apportionable vehicles, (ii) buses, (iii) dealers, (iv) minitrucks, (v) motorcycles, other than autocycles, (vi) special interest motor vehicles that use the special interest motor vehicle license plate authorized by and issued under section 60-3,135.01, (vii) trailers, and (viii) truck-tractors.

(c)(i) One license plate shall be issued, upon request and compliance with this subdivision, for any passenger car which is not manufactured to be equipped with a bracket on the front of the vehicle to display a license plate. A license decal shall be issued with the license plate as provided in subdivision (ii) of this subdivision and shall be displayed on the driver's side of the windshield. In order to request a single license plate and license decal, there shall be an additional annual nonrefundable registration fee of fifty dollars plus the cost of the decal paid to the county treasurer at the time of registration. All fees collected under this subdivision shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(ii) The department shall design, procure, and furnish to the county treasurers a license decal which shall be displayed as evidence that a license plate has been obtained under this subdivision. Each county treasurer shall furnish a license decal to the person obtaining the plate.

(d) When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the registered motor vehicle or

trailer. When only one plate is issued, it shall be prominently displayed on the rear of the registered motor vehicle or trailer. When only one plate is issued for motor vehicles registered pursuant to section 60-3,198 and truck-tractors, it shall be prominently displayed on the front of the apportionable vehicle.

**Source:** Laws 2005, LB 274, § 100; Laws 2010, LB650, § 25; Laws 2011, LB289, § 20; Laws 2012, LB216, § 2; Laws 2015, LB231, § 11; Laws 2016, LB53, § 1; Laws 2018, LB909, § 58; Laws 2019, LB356, § 6.

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).

"Display" of license plates as described in this section logically implies a display of the license plate which is visible. *State v. Reiter*, 3 Neb. App. 153, 524 N.W.2d 575 (1994).

Officer properly stopped vehicle bearing both Missouri license plates and in transit sticker, and when driver failed to produce identification, and upon noticing scratches around vehicle identification number checked to determine whether vehicle was stolen, upon learning it was, was justified in making arrest. *United States v. Harris*, 528 F.2d 1327 (8th Cir. 1975).

### **60-3,101 License plates; when issued; validation decals.**

Except for license plates issued pursuant to sections 60-3,203 and 60-3,228, license plates shall be issued every six years beginning with the license plates issued in the year 2005. Except for plates issued pursuant to such sections, in the years in which plates are not issued, in lieu of issuing such license plates, the department shall furnish to every person whose motor vehicle or trailer is registered one or two validation decals, as the case may be, which validation decals shall bear the year for which issued and be so constructed as to permit them to be permanently affixed to the plates.

**Source:** Laws 2005, LB 274, § 101; Laws 2016, LB783, § 6.

### **60-3,102 Plate fee.**

(1) Except as provided in subsection (2) of this section, whenever new license plates, including duplicate or replacement license plates, are issued to any person, a fee per plate shall be charged in addition to all other required fees. The license plate fee shall be determined by the department and shall only cover the cost of the license plate and validation decals but shall not exceed three dollars and fifty cents. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(2) Beginning January 1, 2021, no license plate fee under this section shall be charged for license plates issued pursuant to section 60-3,122, 60-3,122.02, 60-3,123, 60-3,124, or 60-3,125.

**Source:** Laws 2005, LB 274, § 102; Laws 2019, LB138, § 7.

### **60-3,103 License Plate Cash Fund; created; use; investment.**

There is hereby created the License Plate Cash Fund which shall consist of money transferred to it pursuant to section 39-2215. All costs associated with the manufacture of license plates and decals provided for in the Motor Vehicle Registration Act and section 60-1804 shall be paid from funds appropriated from the License Plate Cash Fund. The fund shall be used exclusively for such purposes and shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer



pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 274, § 103.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-3,104 Types of license plates.**

The department shall issue the following types of license plates:

- (1) Amateur radio station license plates issued pursuant to section 60-3,126;
- (2) Apportionable vehicle license plates issued pursuant to section 60-3,203;
- (3) Autocycle license plates issued pursuant to section 60-3,100;
- (4) Boat dealer license plates issued pursuant to section 60-379;
- (5) Breast Cancer Awareness Plates issued pursuant to sections 60-3,230 and 60-3,231;
- (6) Bus license plates issued pursuant to section 60-3,144;
- (7) Choose Life License Plates issued pursuant to sections 60-3,232 and 60-3,233;
- (8) Commercial motor vehicle license plates issued pursuant to section 60-3,147;
- (9) Dealer or manufacturer license plates issued pursuant to sections 60-3,114 and 60-3,115;
- (10) Disabled veteran license plates issued pursuant to section 60-3,124;
- (11) Donate Life Plates issued pursuant to sections 60-3,245 and 60-3,246;
- (12) Down Syndrome Awareness Plates issued pursuant to sections 60-3,247 and 60-3,248;
- (13) Farm trailer license plates issued pursuant to section 60-3,151;
- (14) Farm truck license plates issued pursuant to section 60-3,146;
- (15) Farm trucks with a gross weight of over sixteen tons license plates issued pursuant to section 60-3,146;
- (16) Fertilizer trailer license plates issued pursuant to section 60-3,151;
- (17) Former military vehicle license plates issued pursuant to section 60-3,236;
- (18) Gold Star Family license plates issued pursuant to sections 60-3,122.01 and 60-3,122.02;
- (19) Handicapped or disabled person license plates issued pursuant to section 60-3,113;
- (20) Historical vehicle license plates issued pursuant to sections 60-3,130 to 60-3,134;
- (21) Josh the Otter-Be Safe Around Water Plates issued pursuant to section 60-3,258;
- (22) Local truck license plates issued pursuant to section 60-3,145;
- (23) Metropolitan utilities district license plates issued pursuant to section 60-3,228;

- (24) Military Honor Plates issued pursuant to sections 60-3,122.03 and 60-3,122.04;
- (25) Minitruck license plates issued pursuant to section 60-3,100;
- (26) Motor vehicle license plates for motor vehicles owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,105;
- (27) Motor vehicles exempt pursuant to section 60-3,107;
- (28) Motorcycle license plates issued pursuant to section 60-3,100;
- (29) Mountain Lion Conservation Plates issued pursuant to sections 60-3,226 and 60-3,227;
- (30) Native American Cultural Awareness and History Plates issued pursuant to sections 60-3,234 and 60-3,235;
- (31) Nebraska Cornhusker Spirit Plates issued pursuant to sections 60-3,127 to 60-3,129;
- (32) Nebraska History Plates issued pursuant to sections 60-3,255 and 60-3,256;
- (33) Nebraska 150 Sesquicentennial Plates issued pursuant to sections 60-3,223 to 60-3,225;
- (34) Nonresident owner thirty-day license plates issued pursuant to section 60-382;
- (35) Passenger car having a seating capacity of ten persons or less and not used for hire issued pursuant to section 60-3,143 other than autocycles;
- (36) Passenger car having a seating capacity of ten persons or less and used for hire issued pursuant to section 60-3,143 other than autocycles;
- (37) Pearl Harbor license plates issued pursuant to section 60-3,122;
- (38) Personal-use dealer license plates issued pursuant to section 60-3,116;
- (39) Personalized message license plates for motor vehicles, trailers, and semitrailers, except motor vehicles, trailers, and semitrailers registered under section 60-3,198, issued pursuant to sections 60-3,118 to 60-3,121;
- (40) Pets for Vets Plates issued pursuant to sections 60-3,249 and 60-3,250;
- (41) Prisoner-of-war license plates issued pursuant to section 60-3,123;
- (42) Prostate Cancer Awareness Plates issued pursuant to section 60-3,240;
- (43) Public power district license plates issued pursuant to section 60-3,228;
- (44) Purple Heart license plates issued pursuant to section 60-3,125;
- (45) Recreational vehicle license plates issued pursuant to section 60-3,151;
- (46) Repossession license plates issued pursuant to section 60-375;
- (47) Sammy's Superheroes license plates for childhood cancer awareness issued pursuant to section 60-3,242;
- (48) Special interest motor vehicle license plates issued pursuant to section 60-3,135.01;
- (49) Specialty license plates issued pursuant to sections 60-3,104.01 and 60-3,104.02;
- (50) Support the Arts Plates issued pursuant to sections 60-3,251 and 60-3,252;

- (51) Support Our Troops Plates issued pursuant to sections 60-3,243 and 60-3,244;
- (52) The Good Life Is Outside Plates issued pursuant to sections 60-3,253 and 60-3,254;
- (53) Trailer license plates issued for trailers owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,106;
- (54) Trailer license plates issued for trailers owned or operated by a metropolitan utilities district or public power district pursuant to section 60-3,228;
- (55) Trailer license plates issued pursuant to section 60-3,100;
- (56) Trailers exempt pursuant to section 60-3,108;
- (57) Transporter license plates issued pursuant to section 60-378;
- (58) Trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction license plates issued pursuant to section 60-3,149;
- (59) Utility trailer license plates issued pursuant to section 60-3,151;
- (60) Well-boring apparatus and well-servicing equipment license plates issued pursuant to section 60-3,109; and
- (61) Wildlife Conservation Plates issued pursuant to section 60-3,238.

**Source:** Laws 2005, LB 274, § 104; Laws 2006, LB 663, § 23; Laws 2007, LB286, § 37; Laws 2007, LB570, § 7; Laws 2009, LB110, § 2; Laws 2010, LB650, § 26; Laws 2012, LB216, § 3; Laws 2014, LB383, § 5; Laws 2015, LB45, § 2; Laws 2015, LB220, § 5; Laws 2015, LB231, § 12; Laws 2016, LB474, § 7; Laws 2016, LB783, § 7; Laws 2016, LB977, § 6; Laws 2017, LB46, § 5; Laws 2017, LB263, § 36; Laws 2018, LB909, § 59; Laws 2019, LB138, § 8; Laws 2019, LB156, § 9; Laws 2019, LB356, § 7; Laws 2020, LB944, § 18; Laws 2021, LB166, § 5; Laws 2021, LB317, § 5. Effective date August 28, 2021.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB166, section 5, with LB317, section 5, to reflect all amendments.

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

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

(2)(a) When the department receives an application for specialty license plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue specialty license plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle, trailer, or semitrailer. If specialty license plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

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

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

**Source:** Laws 2009, LB110, § 3; Laws 2012, LB801, § 65; Laws 2017, LB263, § 37; Laws 2019, LB270, § 15; Laws 2019, LB356, § 8; Laws 2021, LB113, § 4.

Operative date August 28, 2021.

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

(1) The department shall issue specialty license plates for any organization which certifies that it meets the requirements of this section. The department shall work with the organization to design the plates.

(2) The department shall make applications available pursuant to section 60-3,104.01 for each type of specialty license plate when it is designed. The

department shall not manufacture specialty license plates for an organization until the department has received two hundred fifty prepaid applications for specialty license plates designed for that organization. The department may revoke the approval for an organization's specialty license plate if the total number of registered vehicles that obtained such plate is less than two hundred fifty within three years after receiving approval.

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

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

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

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

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

(e) Two hundred fifty prepaid applications for the alphanumeric specialty license plates; and

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

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

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

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

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

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

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

(4)(a) One type of plate under this section shall be alphanumeric plates. The department shall assign a designation up to five characters and not use a county designation.

(b) One type of plate under this section shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used. Personalized message specialty license plates under this section shall only be issued after the requirements of subsection (3) of this section have been met.

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

**Source:** Laws 2009, LB110, § 4; Laws 2016, LB977, § 7; Laws 2020, LB944, § 19.

**Cross References**

Nebraska Nonprofit Corporation Act, see section 21-1901.

**60-3,105 Motor vehicles owned or operated by the state, counties, municipalities, or school districts; distinctive plates or undercover license plates.**

(1) The department may provide a distinctive license plate for all motor vehicles owned or operated by the state, counties, municipalities, or school districts. Motor vehicles owned or operated by the state, counties, municipalities, or school districts shall display such distinctive license plates when such license plates are issued or shall display undercover license plates when such license plates are issued under section 60-3,135.

(2) Any motor vehicle owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system, and exempt from a distinct marking as provided in section 81-1021, may carry license plates the same design and size as are provided in subsection (1) of this section or undercover license plates issued under section 60-3,135.

**Source:** Laws 2005, LB 274, § 105.

**Cross References**

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

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

**60-3,106 Trailers owned or operated by the state, counties, municipalities, or school districts; distinctive plates.**

(1) The department may provide a distinctive license plate for all trailers owned or operated by the state, counties, municipalities, or school districts. Trailers owned or operated by the state, counties, municipalities, or school districts shall display such distinctive license plates when such license plates are issued or shall display undercover license plates when such license plates are issued under section 60-3,135.

(2) Any trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system, and exempt from a distinct marking as provided in section 81-1021, may carry license plates the same design and size as are provided in subsection (1) of this section or undercover license plates issued under section 60-3,135.

**Source:** Laws 2005, LB 274, § 106.

## Cross References

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

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

**60-3,107 Tax-exempt motor vehicles; distinctive plates.**

The department may provide distinctive license plates issued for use on motor vehicles which are tax exempt pursuant to subdivision (6) of section 60-3,185. License plates on such motor vehicles shall display, in addition to the license number, the words tax exempt.

**Source:** Laws 2005, LB 274, § 107; Laws 2007, LB286, § 38.

**60-3,108 Tax-exempt trailers; distinctive plates.**

The department may provide distinctive license plates issued for use on trailers exempt pursuant to subdivision (6) of section 60-3,185. License plates on such trailers shall display, in addition to the license number, the word exempt which shall appear at the bottom of the license plates.

**Source:** Laws 2005, LB 274, § 108.

**60-3,109 Well-boring apparatus and well-servicing equipment license plates.**

(1) Any owner of well-boring apparatus and well-servicing equipment may make application to the county treasurer for license plates.

(2) Well-boring apparatus and well-servicing equipment license plates shall display thereon, in addition to the license number, the words special equipment.

**Source:** Laws 2005, LB 274, § 109; Laws 2012, LB801, § 66.

**60-3,110 Local truck; special permit; fee.**

Any owner of a motor vehicle registered as a local truck may make application to the department for a special permit authorizing operation of such local truck on the highways of this state beyond the limits specified by law for local trucks for the sole purpose of having such truck equipped, modified, or serviced. The operator of the local truck shall have such permit in his or her possession at all times when he or she is operating such local truck beyond the limits specified by law for the local truck and shall display such permit upon demand of proper authorities. The fee for this permit shall be five dollars payable to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 110.

**60-3,111 Farmers and ranchers; special permits; fee.**

Special permits may be supplied by the department and issued by the county treasurer for truck-tractor and semitrailer combinations of farmers or ranchers used wholly and exclusively to carry their own supplies, farm equipment, and household goods to or from the owner's farm or ranch or used by the farmer or rancher to carry his or her own agricultural products to or from storage or market. Such special permits shall be valid for periods of thirty days and shall be carried in the cab of the truck-tractor. The fee for such permit shall be equivalent to one-twelfth of the regular commercial registration fee as determined by gross vehicle weight and size limitations as defined in sections

60-6,288 to 60-6,294, but the fee shall be no less than twenty-five dollars. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

**Source:** Laws 2005, LB 274, § 111; Laws 2012, LB801, § 67.

**60-3,112 Nonresident licensed vehicle hauling grain or seasonally harvested products; permit; fee.**

If a truck, truck-tractor, or trailer is lawfully licensed under the laws of another state or province and is engaged in hauling grain or other seasonally harvested products from the field where they are harvested to storage or market during the period from June 1 to December 15 of each year or under emergency conditions, the right to operate over the highways of this state for a period of ninety days shall be authorized by obtaining a permit therefor from the county treasurer or his or her agent of the county in which grain is first hauled. Such permit shall be issued electronically upon the payment of a fee of twenty dollars for a truck or one hundred fifty dollars for any combination of truck, truck-tractor, or trailer. The fees for such permits, when collected, shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 112; Laws 2012, LB801, § 68.

**60-3,113 Handicapped or disabled person; plates; department; compile and maintain registry.**

(1) The department shall, without the payment of any fee except the taxes and fees required by sections 60-3,102, 60-3,185, 60-3,190, and 60-3,191, issue license plates for one motor vehicle not used for hire and a license plate for one autocycle or motorcycle not used for hire to:

(a) Any permanently handicapped or disabled person or his or her parent, legal guardian, foster parent, or agent upon application and proof of a permanent handicap or disability; or

(b) A trust which owns the motor vehicle, autocycle, or motorcycle if a designated beneficiary of the trust qualifies under subdivision (a) of this subsection.

An application and proof of disability in the form and with the information required by section 60-3,113.02 shall be submitted before license plates are issued or reissued.

(2) The license plate or plates shall carry the internationally accepted wheelchair symbol, which symbol is a representation of a person seated in a wheelchair surrounded by a border six units wide by seven units high, and such other letters or numbers as the director prescribes. Such license plate or plates shall be used by such person in lieu of the usual license plate or plates.

(3) The department shall compile and maintain a registry of the names, addresses, and license numbers of all persons who obtain special license plates pursuant to this section and all persons who obtain a handicapped or disabled parking permit.

**Source:** Laws 2005, LB 274, § 113; Laws 2011, LB163, § 22; Laws 2011, LB289, § 21; Laws 2014, LB657, § 4; Laws 2015, LB231, § 13.

**60-3,113.01 Handicapped or disabled person; parking permits; electronic system; department; duties.**



The department shall develop, implement, and maintain an electronic system for accepting and processing applications for handicapped or disabled parking permits.

**Source:** Laws 2011, LB163, § 23; Laws 2014, LB657, § 5.

**60-3,113.02 Handicapped or disabled person; parking permit; issuance; procedure; renewal; notice; identification card.**

(1) A handicapped or disabled person or temporarily handicapped or disabled person or his or her parent, legal guardian, foster parent, or certifying health care provider may apply for a handicapped or disabled parking permit to the department or through a health care provider using a secure online process developed by the department which will entitle the holder of a permit or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces or access aisles provided for by sections 18-1736 and 18-1737 when the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces or access aisles. For purposes of this section, (a) the handicapped or disabled person or temporarily handicapped or disabled person is considered the holder of the permit and (b) certifying health care provider means the physician, physician assistant, or advanced practice registered nurse who makes the certification required in subsection (2) of this section or his or her designee.

(2) The application process for a handicapped or disabled parking permit or for the renewal of a permit under this section shall include presentation of proof of identity by the handicapped or disabled person or temporarily handicapped or disabled person and certification by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her certification act that the person who will be the holder meets the statutory criteria for qualification. An application for the renewal of a permit under this section may be submitted within one hundred eighty days prior to the expiration of the permit. No applicant shall be required to provide his or her social security number. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or advanced practice registered nurse shall recommend that the permit for the temporarily handicapped or disabled person be issued for either a three-month period or a six-month period, with such recommendation to be based on the estimated date of recovery.

(3) The department, upon receipt of a completed application for a handicapped or disabled parking permit under this section, shall verify that the applicant qualifies for such permit and, if so, shall deliver the permit to the applicant. In issuing a renewal of a permit, the department shall deliver a new expiration sticker to the applicant to be affixed to the existing permit. Such renewal sticker shall not be issued sooner than ten days prior to the date of expiration of the existing permit. A person may hold up to two permits under this section. If a person holds a permit under this section, such person may not hold a permit under section 60-3,113.03.

(4) In issuing any handicapped or disabled parking permit under this section, the department shall include a notice and an identification card. The notice shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled

person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The notice shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. The identification card shall show the expiration date of the permit and such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom the permit is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the department.

**Source:** Laws 2011, LB163, § 24; Laws 2013, LB31, § 1; Laws 2014, LB657, § 6; Laws 2018, LB909, § 60.

**60-3,113.03 Handicapped or disabled person; parking permit; permit for specific motor vehicle; application; issuance; procedure; renewal; notice; identification card.**

(1) The department shall take an application from any person for a handicapped or disabled parking permit that is issued for a specific motor vehicle and entitles the holder thereof or a person driving the motor vehicle for the purpose of transporting handicapped or disabled persons or temporarily handicapped or disabled persons to park in those spaces or access aisles provided for by sections 18-1736 and 18-1737 if the motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. Such permit shall be used only when the motor vehicle for which it was issued is being used for the transportation of a handicapped or disabled person or temporarily handicapped or disabled person and such person will enter or exit the motor vehicle while it is parked in such designated spaces or access aisles.

(2) A person applying for a handicapped or disabled parking permit or for the renewal of a permit pursuant to this section shall apply for a permit for each motor vehicle used for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons and shall include such information as is required by the department, including a demonstration to the department that each such motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. An application for the renewal of a permit under this section may be submitted within one hundred eighty days prior to the expiration of the permit.

(3) The department, upon receipt of a completed application, shall verify that the applicant qualifies for a handicapped or disabled parking permit under this section and, if so, shall deliver the permit to the applicant. In issuing renewed permits, the department shall deliver each individual renewal to the applicant as provided in section 60-3,113.02. The renewed permit shall not be issued sooner than ten days prior to the date of expiration, and the existing permit shall be invalid upon receipt of the renewed permit. No more than one such permit shall be issued for each motor vehicle under this section.

(4) In issuing any handicapped or disabled parking permit under this section, the department shall include a notice and an identification card to the registered owner of the motor vehicle or the applicant. The notice shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used for the motor vehicle for which it is issued, is not to

be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The notice shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. The identification card shall identify the motor vehicle for which the permit is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the department.

**Source:** Laws 2011, LB163, § 25; Laws 2014, LB657, § 7; Laws 2018, LB909, § 61.

**60-3,113.04 Handicapped or disabled person; parking permit; contents; issuance; duplicate permit.**

(1) A handicapped or disabled parking permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the regulations adopted by the United States Department of Transportation in 23 C.F.R. part 1235, UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES, as such regulations existed on January 1, 2021.

(2) No handicapped or disabled parking permit shall be issued to any person or for any motor vehicle if any permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741.02. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 60-3,113.02, 60-3,113.03, and 60-3,113.05.

(3) A duplicate handicapped or disabled parking permit may be provided up to two times during any single permit period if a permit is destroyed, lost, or stolen. Such duplicate permit shall be issued as provided in section 60-3,113.02 or 60-3,113.03, whichever is applicable, except that a new certification by a physician, a physician assistant, or an advanced practice registered nurse need not be provided. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued. If a person has been issued two duplicate permits under this subsection and needs another permit, such person shall reapply for a new permit under section 60-3,113.02 or 60-3,113.03, whichever is applicable.

**Source:** Laws 2011, LB163, § 26; Laws 2012, LB751, § 13; Laws 2013, LB35, § 1; Laws 2014, LB657, § 8; Laws 2014, LB776, § 2; Laws 2015, LB313, § 2; Laws 2016, LB929, § 4; Laws 2017, LB263, § 38; Laws 2018, LB909, § 62; Laws 2019, LB79, § 7; Laws 2020, LB944, § 20; Laws 2021, LB149, § 6.  
Effective date August 28, 2021.

**60-3,113.05 Handicapped or disabled persons; parking permit; expiration date; permit for temporarily handicapped or disabled person; period valid; renewal.**

(1) Permanently issued handicapped or disabled parking permits shall be valid for a period ending on the last day of the month of the applicant's birthday in the sixth year after issuance and shall expire on that day.

(2) All handicapped or disabled parking permits for temporarily handicapped or disabled persons shall be issued for a period ending either three months after the date of issuance or six months after the date of issuance, with such

period to be based on the estimated date of recovery, but such permit may be renewed one time for a similar three-month or six-month period. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

**Source:** Laws 2011, LB163, § 27; Laws 2013, LB31, § 2; Laws 2014, LB657, § 9; Laws 2016, LB865, § 2.

**60-3,113.06 Handicapped or disabled persons; parking permit; use; display; prohibited acts; violation; penalty.**

A handicapped or disabled parking permit shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which the permit is issued. A handicapped or disabled parking permit shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. A handicapped or disabled parking permit shall be displayed on the dashboard only when there is no rearview mirror. No person shall alter or reproduce in any manner a handicapped or disabled parking permit. No person shall knowingly hold more than the allowed number of handicapped or disabled parking permits. No person shall display a handicapped or disabled parking permit issued under section 60-3,113.02 and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless the holder of the permit will enter or exit the motor vehicle while it is parked in a designated space or access aisle. No person shall display a handicapped or disabled parking permit issued under section 60-3,113.03 and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless the person displaying the permit is driving the motor vehicle for which the permit was issued and a handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated space or access aisle. Any violation of this section shall constitute a handicapped parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07.

**Source:** Laws 2011, LB163, § 28; Laws 2014, LB657, § 10.

**60-3,113.07 Handicapped or disabled persons; parking permit; prohibited acts; violation; penalty; powers of director.**

(1) No person shall knowingly provide false information on an application for a handicapped or disabled parking permit. Any person who violates this subsection shall be guilty of a Class III misdemeanor.

(2) If the director discovers evidence of fraud in an application for a handicapped or disabled parking permit or a license plate issued under section 60-3,113, the director may summarily cancel such permit or license plate and send notice of cancellation to the applicant.

**Source:** Laws 2011, LB163, § 29; Laws 2014, LB657, § 11.

**60-3,113.08 Handicapped or disabled persons; parking permit; rules and regulations.**

The department may adopt and promulgate rules and regulations necessary to fulfill any duties and obligations as provided in sections 60-3,113.01 to 60-3,113.08. All rules and regulations of the department relating to the issuance and use of handicapped or disabled parking permits adopted and promulgated

prior to July 18, 2014, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

**Source:** Laws 2011, LB163, § 30; Laws 2014, LB657, § 12.

**60-3,114 Dealer or manufacturer license plates; fee.**

(1) Any licensed dealer or manufacturer may, upon payment of a fee of thirty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer of the county in which his or her place of business is located for a certificate and one dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. One additional dealer license plate may be procured for the type of motor vehicle or trailer the dealer has sold during the last previous period of October 1 through September 30 for each twenty motor vehicles or trailers sold at retail during such period or one additional dealer license plate for each thirty motor vehicles or trailers sold at wholesale during such period, but not to exceed a total of five additional dealer license plates in the case of motor vehicles or trailers sold at wholesale, or, in the case of a manufacturer, for each ten motor vehicles or trailers actually manufactured or assembled within the state within the last previous period of October 1 through September 30 for a fee of fifteen dollars each.

(2) Dealer or manufacturer license plates shall display, in addition to the registration number, the letters DLR.

**Source:** Laws 2005, LB 274, § 114; Laws 2012, LB801, § 69.

**60-3,115 Additional dealer license plates; unauthorized use; hearing.**

When an applicant applies for a license, the Nebraska Motor Vehicle Industry Licensing Board may authorize the county treasurer to issue additional dealer license plates when the dealer or manufacturer furnishes satisfactory proof for a need of additional dealer license plates because of special condition or hardship. In the case of unauthorized use of dealer license plates by any licensed dealer, the Nebraska Motor Vehicle Industry Licensing Board may hold a hearing and after such hearing may determine that such dealer is not qualified for continued usage of such dealer license plates for a set period not to exceed one year.

**Source:** Laws 2005, LB 274, § 115; Laws 2012, LB801, § 70.

**60-3,116 Personal-use dealer license plates; fee.**

(1) Any licensed dealer or manufacturer may, upon payment of an annual fee of two hundred fifty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer of the county in which his or her place of business is located for a certificate and one personal-use dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. Additional personal-use dealer license plates may be procured upon payment of an annual fee of two hundred fifty dollars each, subject to the same limitations as provided in section 60-3,114 as to the number of additional dealer license plates. A personal-use dealer license plate may be displayed on a motor vehicle having a gross weight including any load of six thousand pounds or less belonging to the dealer, may be used in the same

manner as a dealer license plate, and may be used for personal or private use of the dealer, the dealer's immediate family, or any bona fide employee of the dealer.

(2) Personal-use dealer license plates shall have the same design and shall be displayed as provided in sections 60-370 and 60-3,100.

**Source:** Laws 2005, LB 274, § 116; Laws 2010, LB816, § 11; Laws 2012, LB801, § 71; Laws 2017, LB346, § 2.

**60-3,117 Surrender of dealer license plates; when.**

When any motor vehicle or trailer dealer's or manufacturer's license has been revoked or otherwise terminated, it shall be the duty of such dealer or manufacturer to immediately surrender to the department or to the Nebraska Motor Vehicle Industry Licensing Board any dealer license plates issued to him or her for the current year. Failure of such dealer or manufacturer to immediately surrender such dealer license plates to the department upon demand by the department shall be unlawful.

**Source:** Laws 2005, LB 274, § 117.

**60-3,118 Personalized message license plates; conditions.**

(1) In lieu of the license plates provided for by section 60-3,100, the department shall issue personalized message license plates for motor vehicles, trailers, or semitrailers, except for motor vehicles and trailers registered under section 60-3,198, to all applicants who meet the requirements of sections 60-3,119 to 60-3,121. Personalized message license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used, except that for an autocycle or a motorcycle, a maximum of six characters may be used.

(2) The following conditions apply to all personalized message license plates:

(a) County prefixes shall not be allowed except in counties using the alphanumeric system for motor vehicle registration. The numerals in the county prefix shall be the numerals assigned to the county, pursuant to subsection (2) of section 60-370, in which the motor vehicle or trailer is registered. Renewal of a personalized message license plate containing a county prefix shall be conditioned upon the motor vehicle or trailer being registered in such county. The numerals in the county prefix, including the hyphen or any other unique design for an existing license plate style, count against the maximum number of characters allowed under this section;

(b) The characters in the order used shall not conflict with or duplicate any number used or to be used on the regular license plates or any number or license plate already approved pursuant to sections 60-3,118 to 60-3,121;

(c) The characters in the order used shall not express, connote, or imply any obscene or objectionable words or abbreviations; and

(d) An applicant receiving a personalized message license plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to such license plate.

(3) The department shall have sole authority to determine if the conditions prescribed in subsection (2) of this section have been met.

**Source:** Laws 2005, LB 274, § 118; Laws 2007, LB286, § 39; Laws 2015, LB231, § 14; Laws 2017, LB263, § 39.

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

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

(2) Each initial application shall be accompanied by a fee of forty dollars. The fees shall be remitted to the State Treasurer. Until January 1, 2021, the State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund. Beginning January 1, 2021, the State Treasurer shall credit forty percent of the fee to the Highway Trust Fund and sixty percent of the fee to the Department of Motor Vehicles Cash Fund.

(3) An application for renewal of a license plate previously approved and issued shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subsection shall remit them to the State Treasurer. Until January 1, 2021, the State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund. Beginning January 1, 2021, the State Treasurer shall credit forty percent of the fee to the Highway Trust Fund and sixty percent of the fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 274, § 119; Laws 2009, LB110, § 5; Laws 2012, LB801, § 72; Laws 2019, LB356, § 9.

**60-3,120 Personalized message license plates; delivery; fee.**

When the department approves an application for personalized message license plates, the department shall notify the applicant and deliver the license plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is to be registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue such plates to the applicant, in lieu of regular license plates, when the applicant complies with the other provisions of law for registration of the motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 120; Laws 2012, LB801, § 73; Laws 2017, LB263, § 40; Laws 2021, LB113, § 5.  
Operative date August 28, 2021.

**60-3,121 Personalized message license plates; transfer; credit allowed; fee.**

(1) The owner of a motor vehicle or trailer bearing personalized message license plates may make application to the county treasurer to have such license plates transferred to a motor vehicle or trailer other than the motor vehicle or trailer for which such license plates were originally purchased if such motor vehicle or trailer is owned by the owner of the license plates.

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

(3) Application for such transfer shall be accompanied by a fee of three dollars. The fees shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 274, § 121; Laws 2012, LB801, § 74; Laws 2017, LB263, § 41.

**60-3,122 Pearl Harbor plates.**

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

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

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

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

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

(2) Pearl Harbor license plates shall be issued upon the applicant paying the license plate fee as provided in subsection (3) of this section and furnishing proof satisfactory to the department that the applicant fulfills the requirements provided by subsection (1) of this section. Any number of motor vehicles, trailers, or semitrailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) Until January 1, 2021, the applicant for Pearl Harbor license plates shall pay the license plate fee required under section 60-3,102. Beginning January 1, 2021, no license plate fee shall be required for Pearl Harbor license plates.

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

(5) Beginning January 1, 2021, license plates issued under this section shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

(6) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date that is on or before January 1, 2021. The county treasurer or the department may issue



temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

**Source:** Laws 2005, LB 274, § 122; Laws 2007, LB286, § 40; Laws 2009, LB110, § 6; Laws 2010, LB705, § 1; Laws 2015, LB642, § 5; Laws 2017, LB263, § 42; Laws 2019, LB138, § 9; Laws 2019, LB270, § 16.

**60-3,122.01 Gold Star Family plates; design requirements.**

(1) The department shall design license plates to be known as Gold Star Family plates. The department shall create designs reflecting support for those who died while serving in good standing in the United States Armed Forces in consultation with the Department of Veterans' Affairs and the Military Department. The Department of Veterans' Affairs shall recommend the design of the plate to the Department of Motor Vehicles. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.02.

(2) One type of Gold Star Family plate shall be consecutively numbered plates. The department shall:

(a) Number the plates consecutively beginning with the number one, using numerals the size of which maximizes legibility and limiting the numerals to five characters or less; and

(b) Not use a county designation or any characters other than numbers on the plates.

(3) One type of Gold Star Family plate shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

**Source:** Laws 2007, LB570, § 2.

**60-3,122.02 Gold Star Family plates; eligibility; verification; fee; delivery; fee.**

(1) Any person who is a surviving spouse, whether remarried or not, or an ancestor, including a stepparent, a descendant, including a stepchild, a foster parent or a person in loco parentis, or a sibling of a person who died while in good standing on active duty in the military service of the United States may apply to the department for Gold Star Family plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Gold Star Family plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms

available for such applications through the county treasurers. In order to be eligible for Gold Star Family plates, a person shall register with the Department of Veterans' Affairs pursuant to section 80-414. The plates shall be issued upon payment of the license fee described in subsection (2) of this section and verification by the Department of Motor Vehicles of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414.

(2)(a) No additional fee shall be required for consecutively numbered Gold Star Family plates issued under this section and such plates shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

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

(ii) No license plate fee under section 60-3,102 shall be required for personalized message Gold Star Family plates issued under this section, other than the renewal fee provided for in subdivision (2)(b)(i) of this section. Such plates shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually and the renewal fee provided for in subdivision (2)(b)(i) of this section is paid.

(3)(a) When the department receives an application for Gold Star Family plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Gold Star Family plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or trailer. If Gold Star Family plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request and without charge.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department

may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

(4) The owner of a motor vehicle or trailer bearing Gold Star Family plates may apply to the county treasurer to have such plates transferred at no cost to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates, if any, credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period.

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

**Source:** Laws 2007, LB570, § 3; Laws 2009, LB110, § 7; Laws 2009, LB331, § 2; Laws 2012, LB801, § 75; Laws 2017, LB263, § 43; Laws 2019, LB138, § 10; Laws 2019, LB270, § 17; Laws 2021, LB78, § 1; Laws 2021, LB113, § 6.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB78, section 1, with LB113, section 6, to reflect all amendments.

**Note:** Changes made by LB78 became operative January 1, 2022. Changes made by LB113 became operative August 28, 2021.

#### **60-3,122.03 Military Honor Plates; design.**

(1) The department shall design license plates to be known as Military Honor Plates.

(2)(a) Until January 1, 2021, the department shall create designs honoring persons who have served or are serving in the United States Army, United States Army Reserve, United States Navy, United States Navy Reserve, United States Marine Corps, United States Marine Corps Reserve, United States Coast Guard, United States Coast Guard Reserve, United States Air Force, United States Air Force Reserve, or National Guard; and

(b) Beginning January 1, 2021, the department shall create designs honoring persons who have served or are serving in the United States Army, United States Army Reserve, United States Navy, United States Navy Reserve, United States Marine Corps, United States Marine Corps Reserve, United States Coast Guard, United States Coast Guard Reserve, United States Air Force, United States Air Force Reserve, Air National Guard, or Army National Guard.

(3) There shall be eleven such designs until January 1, 2021, and twelve such designs beginning January 1, 2021, one for each of such armed forces reflecting its official emblem, official seal, or other official image. The issuance of plates for each of such armed forces shall be conditioned on the approval of the armed forces owning the copyright to the official emblem, official seal, or other official image.

(4) By January 1, 2021, the department shall create five additional designs honoring persons who are serving or have served in the armed forces of the United States and who have been awarded the Afghanistan Campaign Medal,

Iraq Campaign Medal, Global War on Terrorism Expeditionary Medal, South-west Asia Service Medal, or Vietnam Service Medal.

(5) A person may qualify for a Military Honor Plate by registering with the Department of Veterans' Affairs pursuant to section 80-414. The Department of Motor Vehicles shall verify the applicant's eligibility for a plate created pursuant to this section by consulting the registry established by the Department of Veterans' Affairs.

(6) The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The Department of Motor Vehicles shall make applications available for each type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.04.

(7) One type of Military Honor Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(8) One type of Military Honor Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(9) The department shall cease to issue Military Honor Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2014, LB383, § 9; Laws 2017, LB45, § 1; Laws 2019, LB138, § 11; Laws 2019, LB356, § 10; Laws 2020, LB944, § 21.

**60-3,122.04 Military Honor Plates; fee; eligibility; delivery; fee; transfer; fee.**

(1) An eligible person may apply to the department for Military Honor Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Military Honor Plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section and verification by the department of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. To be eligible an applicant shall be (a) active duty or reserve duty armed forces personnel serving in any of the armed forces listed in subsection (2) of section 60-3,122.03, (b) a veteran of any of such armed forces who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), (c) a current or former commissioned officer of the United States Public Health Service or National Oceanic and Atmospheric Administration who has been detailed directly to any branch of such armed forces for service on active or reserve duty and who was discharged or otherwise separated with a characterization of

honorable or general (under honorable conditions) as proven with valid orders from the United States Department of Defense, a statement of service provided by the United States Public Health Service, or a report of transfer or discharge provided by the National Oceanic and Atmospheric Administration, or (d) a person who is serving or has served in the armed forces of the United States and who has been awarded the Afghanistan Campaign Medal, Iraq Campaign Medal, Global War on Terrorism Expeditionary Medal, Southwest Asia Service Medal, or Vietnam Service Medal. Any person using Military Honor Plates shall surrender the plates to the county treasurer if such person is no longer eligible for the plates. Regular plates shall be issued to any such person upon surrender of the Military Honor Plates for a three-dollar transfer fee and forfeiture of any of the remaining annual fee. The three-dollar transfer fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Military Honor Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Military Honor Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(3)(a) When the department receives an application for Military Honor Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Military Honor Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or trailer. If Military Honor Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department

may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

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

(6) If the director discovers evidence of fraud in an application for Military Honor Plates or that the holder is no longer eligible to have Military Honor Plates, the director may summarily cancel the plates and registration and send notice of the cancellation to the holder of the license plates.

**Source:** Laws 2014, LB383, § 10; Laws 2017, LB45, § 2; Laws 2017, LB263, § 44; Laws 2019, LB138, § 12; Laws 2019, LB270, § 18; Laws 2019, LB356, § 11; Laws 2021, LB113, § 7.  
Operative date August 28, 2021.

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

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

(2) In order to be eligible for license plates under this section, a person shall register with the Department of Veterans' Affairs pursuant to section 80-414. The license plates shall be issued upon the applicant paying the license plate fee as provided in subsection (3) of this section and verification by the Department of Motor Vehicles of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. Any number of motor vehicles, trailers, or semitrailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) Until January 1, 2021, the applicant for license plates under this section shall pay the license plate fee required under section 60-3,102. Beginning January 1, 2021, no license plate fee shall be required for license plates under this section.

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

(5) Beginning January 1, 2021, license plates issued under this section shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

(6) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date that is on or before January 1, 2021. The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

**Source:** Laws 2005, LB 274, § 123; Laws 2007, LB286, § 41; Laws 2009, LB110, § 8; Laws 2010, LB705, § 2; Laws 2014, LB383, § 6; Laws 2017, LB263, § 45; Laws 2019, LB138, § 13; Laws 2019, LB270, § 19; Laws 2021, LB78, § 2.  
Operative date January 1, 2022.

**60-3,124 Disabled veteran plates; eligibility; verification; fee.**

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

(2) In order to be eligible for license plates under this section, a person shall register with the Department of Veterans' Affairs pursuant to section 80-414. The plates shall be issued upon the applicant paying the license plate fee as provided in subsection (3) of this section and verification by the Department of Motor Vehicles of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. Any number of motor vehicles, trailers, or semitrailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) Until January 1, 2021, the applicant for license plates under this section shall pay the license plate fee required under section 60-3,102. Beginning January 1, 2021, no license plate fee shall be required for license plates under this section.

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

(5) Beginning January 1, 2021, license plates issued under this section shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

(6) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date that is on or before January 1, 2021. The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

**Source:** Laws 2005, LB 274, § 124; Laws 2007, LB286, § 42; Laws 2009, LB110, § 9; Laws 2010, LB705, § 3; Laws 2015, LB642, § 6; Laws 2017, LB263, § 46; Laws 2019, LB138, § 14; Laws 2019, LB270, § 20; Laws 2021, LB78, § 3.  
Operative date January 1, 2022.

**60-3,125 Purple Heart plates; eligibility; verification; fee.**

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

(2) In order to be eligible for license plates under this section, a person shall register with the Department of Veterans' Affairs pursuant to section 80-414. The license plates shall be issued upon payment of the license plate fee as provided in subsection (3) of this section and verification by the Department of Motor Vehicles of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. Any number of motor vehicles, trailers, or semitrailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) Until January 1, 2021, the applicant for license plates under this section shall pay the license plate fee required under section 60-3,102. Beginning January 1, 2021, no license plate fee shall be required for license plates under this section.

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

(5) Beginning January 1, 2021, license plates issued under this section shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.



(6) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date that is on or before January 1, 2021. The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

**Source:** Laws 2005, LB 274, § 125; Laws 2007, LB286, § 43; Laws 2009, LB110, § 10; Laws 2014, LB383, § 7; Laws 2017, LB263, § 47; Laws 2019, LB138, § 15; Laws 2019, LB270, § 21; Laws 2021, LB78, § 4.

Operative date January 1, 2022.

**60-3,126 Amateur radio station license plates; fee; renewal.**

(1) Any person who holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission and is the owner of a motor vehicle, trailer, or semitrailer, except for motor vehicles and trailers registered under section 60-3,198, may, in addition to the application required by section 60-385, apply to the department for license plates upon which shall be inscribed the official amateur radio call letters of such applicant.

(2) Such license plates shall be issued, in lieu of the usual numbers and letters, to such an applicant upon payment of the regular license fee and the payment of an additional fee of five dollars and furnishing proof that the applicant holds such an unrevoked and unexpired amateur radio station license. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one such motor vehicle or trailer owned by an applicant shall be so registered at any one time.

(3) An applicant applying for renewal of amateur radio station license plates shall again furnish proof that he or she holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission.

(4) The department shall prescribe the size and design of the license plates and furnish such plates to the persons applying for and entitled to the same upon the payment of the required fee.

(5) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date that is on or before January 1, 2021. The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

**Source:** Laws 2005, LB 274, § 126; Laws 2007, LB286, § 44; Laws 2017, LB263, § 48; Laws 2019, LB270, § 22.

**60-3,127 Nebraska Cornhusker Spirit Plates; design requirements.**

(1) The department, in designing Nebraska Cornhusker Spirit Plates, shall:

(a) Include the word Cornhuskers or Huskers prominently in the design;

(b) Use scarlet and cream colors in the design or such other similar colors as the department determines to best represent the official team colors of the University of Nebraska Cornhuskers athletic programs and to provide suitable reflection and contrast;

(c) Use cream or a similar color for the background of the design and scarlet or a similar color for the printing; and

(d) Create a design reflecting support for the University of Nebraska Cornhuskers athletic programs in consultation with the University of Nebraska-Lincoln Athletic Department. The design shall be selected on the basis of (i) enhancing the marketability of spirit plates to supporters of University of Nebraska Cornhuskers athletic programs and (ii) limiting the manufacturing cost of each spirit plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102.

(2) One type of Nebraska Cornhusker Spirit Plates shall be consecutively numbered spirit plates. The department shall:

(a) Number the spirit plates consecutively beginning with the number one, using numerals the size of which maximizes legibility; and

(b) Not use a county designation or any characters other than numbers on the spirit plates.

(3) One type of Nebraska Cornhusker Spirit Plates shall be personalized message spirit plates. Such plates shall be issued subject to the same conditions specified for message plates in subsection (2) of section 60-3,118. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used.

(4) The department shall cease to issue Nebraska Cornhusker Spirit Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2005, LB 274, § 127; Laws 2019, LB356, § 12; Laws 2020, LB944, § 22.

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

(1) A person may apply to the department for Nebraska Cornhusker Spirit Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a spirit plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the spirit plate. The department shall make forms available for such applications through the county treasurers. Each application for initial issuance or renewal of spirit plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this

subsection shall be remitted to the State Treasurer. The State Treasurer shall credit sixty percent of the fees for initial issuance and renewal of spirit plates to the Department of Motor Vehicles Cash Fund and forty percent of the fees to the Highway Trust Fund.

(2)(a) When the department receives an application for spirit plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue spirit plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle or trailer. If spirit plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

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

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

**Source:** Laws 2005, LB 274, § 128; Laws 2007, LB286, § 45; Laws 2009, LB110, § 11; Laws 2012, LB801, § 76; Laws 2017, LB263, § 49; Laws 2019, LB270, § 23; Laws 2019, LB356, § 13; Laws 2021, LB113, § 8.

Operative date August 28, 2021.

**60-3,129 Spirit Plate Proceeds Fund; created; use; investment.**

(1) The Spirit Plate Proceeds Fund is created. Any money in the fund available for investment shall be invested by the state investment officer

pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) If the cost of manufacturing Nebraska Cornhusker Spirit Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Spirit Plate Proceeds Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of such spirit plates and the amount charged pursuant to such section with respect to such spirit plates and the remainder shall be credited to the Spirit Plate Proceeds Fund as provided in section 60-3,128.

(3) The first three million dollars credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund shall be appropriated to the University of Nebraska to establish an endowment fund to provide financial support to former University of Nebraska athletes to pursue undergraduate and postgraduate studies at any University of Nebraska campus. Funds appropriated by the Legislature for such scholarship program shall be held, managed, and invested as an endowed scholarship fund in such manner as the Board of Regents of the University of Nebraska shall determine and as authorized by section 72-1246. The income from the endowed scholarship fund shall be expended for such scholarships. The University of Nebraska shall grant financial support to former athletes who demonstrate financial need as determined by the Federal Pell Grant Program or similar need-based qualifications as approved by the financial aid office of the appropriate campus.

(4) The next two million dollars credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund shall be appropriated to the University of Nebraska to establish an endowment fund to provide financial support for the academic service units of the athletic departments of the campuses of the University of Nebraska in support of academic services to athletes.

**Source:** Laws 2005, LB 274, § 129; Laws 2009, LB110, § 12.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **60-3,130 Historical license plates; conditions.**

(1) Except as provided in section 60-3,134, a person presenting a certificate of title issued pursuant to section 60-142.01 or 60-142.02 or a certificate of title indicating that the vehicle is thirty or more years old may apply for historical license plates or may use license plates of the year of manufacture in lieu of regular license plates as provided in sections 60-3,130 to 60-3,134.

(2) Each collector applying for such license plates, other than a nonprofit organization described in sections 21-608 and 21-609, must own and have registered one or more motor vehicles with regular license plates which he or she uses for regular transportation.

(3) A motor vehicle or trailer manufactured, assembled from a kit, or otherwise assembled as a reproduction or facsimile of a historical vehicle shall not be eligible for historical license plates unless it has been in existence for

thirty years or more. The age of the motor vehicle or trailer shall be calculated from the year reflected on the certificate of title.

**Source:** Laws 2005, LB 274, § 130; Laws 2006, LB 663, § 24.

**60-3,130.01 Historical license plates; application; form; contents.**

The application under section 60-3,130 shall be made on a form prescribed and furnished by the department. The form shall contain (1) a description of the vehicle owned and sought to be registered, including the make, body type, model, vehicle identification number, and year of manufacture, (2) a description of any vehicle owned by the applicant and registered by him or her with regular license plates and used for regular transportation, which description shall include make, body type, model, vehicle identification number, year of manufacture, and the Nebraska registration number assigned to the vehicle, and (3) an affidavit sworn to by the vehicle owner that the historical vehicle is being collected, preserved, restored, and maintained by the applicant as a hobby and not for the general use of the vehicle for the same purposes and under the same circumstances as other motor vehicles of the same type.

**Source:** Laws 2006, LB 663, § 25.

**60-3,130.02 Historical license plates; fees.**

(1) An initial processing fee of ten dollars shall be submitted with an application under section 60-3,130 to defray the costs of issuing the first plate to each collector and to establish a distinct identification number for each collector. A fee of fifty dollars for each vehicle so registered shall also be submitted with the application.

(2) For use of license plates as provided in section 60-3,130.04, a fee of twenty-five dollars shall be submitted with the application in addition to the fees specified in subsection (1) of this section.

(3) The fees shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

**Source:** Laws 2006, LB 663, § 26.

**60-3,130.03 Historical license plates; department; powers and duties.**

The department shall design historical license plates with a distinctive design which, in addition to the identification number, includes the words historical and Nebraska for identification. The department may adopt and promulgate rules and regulations to implement sections 60-3,130 to 60-3,134.

**Source:** Laws 2006, LB 663, § 27.

**60-3,130.04 Historical vehicle; model-year license plates; authorized.**

(1) An owner of a historical vehicle eligible for registration under section 60-3,130 may use a license plate or plates designed by this state in the year corresponding to the model year when the vehicle was manufactured in lieu of the plates designed pursuant to section 60-3,130.03 subject to the approval of the department. The department shall inspect the plate or plates and may approve the plate or plates if it is determined that the model-year license plate or plates are legible and serviceable and that the license plate numbers do not conflict with or duplicate other numbers assigned and in use. An original-issued

license plate or plates that have been restored to original condition may be used when approved by the department.

(2) The department may consult with a recognized car club in determining whether the year of the license plate or plates to be used corresponds to the model year when the vehicle was manufactured.

(3) If only one license plate is used on the vehicle, the license plate shall be placed on the rear of the vehicle. The owner of a historical vehicle may use only one plate on the vehicle even for years in which two license plates were issued for vehicles in general.

(4) License plates used pursuant to this section corresponding to the year of manufacture of the vehicle shall not be personalized message license plates, Pearl Harbor license plates, prisoner-of-war license plates, disabled veteran license plates, Purple Heart license plates, amateur radio station license plates, Nebraska Cornhusker Spirit Plates, Nebraska History Plates, handicapped or disabled person license plates, specialty license plates, special interest motor vehicle license plates, Military Honor Plates, Nebraska 150 Sesquicentennial Plates, Breast Cancer Awareness Plates, Prostate Cancer Awareness Plates, Mountain Lion Conservation Plates, Choose Life License Plates, Donate Life Plates, Down Syndrome Awareness Plates, Native American Cultural Awareness and History Plates, Sammy's Superheroes license plates for childhood cancer awareness, Wildlife Conservation Plates, Pets for Vets Plates, Support the Arts Plates, Support Our Troops Plates, The Good Life Is Outside Plates, or Josh the Otter-Be Safe Around Water Plates.

**Source:** Laws 2006, LB 663, § 28; Laws 2007, LB286, § 46; Laws 2009, LB110, § 13; Laws 2013, LB32, § 1; Laws 2014, LB383, § 8; Laws 2015, LB220, § 6; Laws 2016, LB474, § 8; Laws 2016, LB977, § 8; Laws 2017, LB46, § 6; Laws 2017, LB263, § 50; Laws 2019, LB138, § 16; Laws 2019, LB356, § 14; Laws 2020, LB944, § 23; Laws 2021, LB166, § 6; Laws 2021, LB317, § 6. Effective date August 28, 2021.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB166, section 6, with LB317, section 6, to reflect all amendments.

#### **60-3,130.05 Historical license plates; model-year license plates; validity.**

License plates issued or used pursuant to section 60-3,130 or 60-3,130.04 shall be valid while the vehicle is owned by the applicant without the payment of any additional fee, tax, or license.

**Source:** Laws 2006, LB 663, § 29.

#### **60-3,130.06 Historical vehicle; transfer of registration and license plates; authorized; fee.**

A collector, upon loss of possession of a historical vehicle registered pursuant to section 60-3,130, may have the registration and license plate transferred to another vehicle in his or her possession, which is eligible for such registration, upon payment of a fee of twenty-five dollars. The fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

**Source:** Laws 2006, LB 663, § 30.

#### **60-3,130.07 Historical vehicles; registered and licensed on August 24, 1975; how treated.**

Collectors who, on August 24, 1975, had vehicles registered and licensed as historical vehicles shall be permitted to retain such registration and license if the collector submits an affidavit to the department sworn to by the vehicle owner that the vehicle is being collected, preserved, restored, and maintained as a hobby and not for the general use of the vehicle.

**Source:** Laws 2006, LB 663, § 31.

**60-3,131 Historical vehicles; use.**

(1) Except as otherwise provided in subsection (2) of this section, historical vehicles may be used for hobby pursuits but shall not be used for the same purposes and under the same conditions as other motor vehicles or trailers of the same type, and under ordinary circumstances, such historical vehicles shall not be used to transport passengers for hire. Any such historical vehicle shall not be used for business or occupation or regularly for transportation to and from work, and may be driven on the public streets and roads only for servicing, test drives, public displays, parades, and related pleasure or hobby activities.

(2) For special events that are sponsored or in which participation is by organized clubs such historical vehicles may:

(a) Transport passengers for hire only if any money received is to be used for club activities or to be donated to a charitable nonprofit organization; and

(b) Haul other vehicles to and from such special event.

**Source:** Laws 2005, LB 274, § 131; Laws 2006, LB 815, § 1.

**60-3,132 Historical vehicles; storage; conditions.**

Subject to land-use regulations of a county or municipality, a collector may store any motor vehicles, trailers, or parts vehicles, licensed or unlicensed, operable or inoperable, on his or her property if such motor vehicles, trailers, and parts vehicles and any outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and if the motor vehicles, trailers, and parts vehicles are located away from ordinary public view or are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, opaque covering, or other appropriate means.

**Source:** Laws 2005, LB 274, § 132; Laws 2006, LB 663, § 32.

Defendant who engaged in conduct clearly proscribed by this section lacks standing to attack the statute as vague. Defendant who failed to show that the proscriptions of this section reached

a substantial amount of constitutionally protected conduct lacks standing to challenge it based on overbreadth. *State v. Sommerfeld*, 251 Neb. 876, 560 N.W.2d 420 (1997).

**60-3,133 Historical vehicles; emission controls; exempt, when; safety equipment; proper operating condition.**

(1) Unless the presence of equipment specifically named by Nebraska law was a prior condition for legal sale within Nebraska at the time a specific model of historical vehicle was manufactured for first use, the presence of such equipment shall not be required as a condition for use of any such model of historical vehicle as authorized in section 60-3,131.

(2) Any historical vehicle manufactured prior to the date emission controls were standard equipment on that particular make or model of historical vehicle is exempted from statutes requiring the inspection and use of such emission controls.

(3) Any safety equipment that was manufactured as part of the historical vehicle's original equipment must be in proper operating condition.

**Source:** Laws 2005, LB 274, § 133; Laws 2006, LB 663, § 33.

**60-3,134 Historical vehicle; registered with regular license plates; when.**

Any motor vehicle or trailer that qualifies as an historical vehicle which is used for the same general purposes and under the same conditions as motor vehicles or trailers registered with regular license plates shall be required to be registered with regular license plates, regardless of its age, and shall be subject to the payment of the same taxes and fees required of motor vehicles or trailers registered with regular license plates.

**Source:** Laws 2005, LB 274, § 134.

**60-3,135 Undercover license plates; issuance; confidential.**

(1)(a) Undercover license plates may be issued to federal, state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover license plates may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover license plates shall not be used on personally owned vehicles or for personal use of government-owned vehicles.

(b) The director shall prescribe a form for agencies to apply for undercover license plates. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover license plates are to be used only for legitimate criminal investigatory purposes, and a statement that undercover license plates are not to be used on personally owned vehicles or for personal use of government-owned vehicles.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fee prescribed in section 60-3,102. If the undercover license plates will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover license plates will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover license plates will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover license plates will be used for such a purpose, he or she may issue the undercover license plates in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover license plates is final.



(4) The department shall keep records pertaining to undercover license plates confidential, and such records shall not be subject to public disclosure.

(5) The contact person shall return the undercover license plates to the department if:

- (a) The undercover license plates expire and are not renewed;
- (b) The purpose for which the undercover license plates were issued has been completed or terminated; or
- (c) The director requests their return.

(6) A state agency, board, or commission that uses motor vehicles from the transportation services bureau of the Department of Administrative Services shall notify the bureau immediately after undercover license plates have been assigned to the motor vehicle and shall provide the equipment and license plate number and the undercover license plate number to the bureau. The transportation services bureau shall maintain a list of state-owned motor vehicles which have been assigned undercover license plates. The list shall be confidential and not be subject to public disclosure.

(7) The contact person shall be held accountable to keep proper records of the number of undercover plates possessed by the agency, the particular license plate numbers for each motor vehicle, and the person who is assigned to the motor vehicle. This record shall be confidential and not be subject to public disclosure.

**Source:** Laws 2005, LB 274, § 135; Laws 2007, LB296, § 227; Laws 2009, LB28, § 1.

**60-3,135.01 Special interest motor vehicle license plates; application; fee; delivery; fee; special interest motor vehicle; restrictions on use; prohibited acts; penalty.**

(1) The department shall either modify an existing plate design or design license plates to identify special interest motor vehicles, to be known as special interest motor vehicle license plates. The department, in designing such special interest motor vehicle license plates, shall include the words special interest and limit the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall choose the design of the plate. The department shall make applications available for this type of plate when it is designed.

(2) One type of special interest motor vehicle license plate shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to seven characters; and
- (b) Not use a county designation.

(3) One type of special interest motor vehicle license plate shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118.

(4) A person may apply to the department for a special interest motor vehicle license plate in lieu of regular license plates on an application prescribed and provided by the department for any special interest motor vehicle, except that no motor vehicle registered under section 60-3,198, autocycle, motorcycle, or trailer shall be eligible for special interest motor vehicle license plates. The

department shall make forms available for such applications through the county treasurers.

(5) The form shall contain a description of the special interest motor vehicle owned and sought to be registered, including the make, body type, model, serial number, and year of manufacture.

(6)(a) In addition to all other fees required to register a motor vehicle, each application for initial issuance or renewal of a special interest motor vehicle license plate shall be accompanied by a special interest motor vehicle license plate fee of fifty dollars. Twenty-five dollars of the special interest motor vehicle license plate fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund, and twenty-five dollars of the special interest motor vehicle license plate fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(b) If a special interest motor vehicle license plate is lost, stolen, or mutilated, the owner shall be issued a replacement license plate pursuant to section 60-3,157.

(7) When the department receives an application for a special interest motor vehicle license plate, the department may deliver the plate and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the special interest motor vehicle is registered and the delivery of the plate and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue the special interest motor vehicle license plate in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the special interest motor vehicle.

(8) If the cost of manufacturing special interest motor vehicle license plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Department of Motor Vehicles Cash Fund under this section shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of special interest motor vehicle license plates and the amount charged pursuant to section 60-3,102 with respect to such license plates and the remainder shall be credited to the Department of Motor Vehicles Cash Fund.

(9) The special interest motor vehicle license plate shall be affixed to the rear of the special interest motor vehicle.

(10) A special interest motor vehicle shall not be used for the same purposes and under the same conditions as other motor vehicles of the same type and shall not be used for business or occupation or regularly for transportation to and from work. A special interest motor vehicle may be driven on the public streets and roads only for occasional transportation, public displays, parades, and related pleasure or hobby activities.

(11) It shall be unlawful to own or operate a motor vehicle with special interest motor vehicle license plates in violation of this section. Upon conviction

of a violation of any provision of this section, a person shall be guilty of a Class V misdemeanor.

(12) For purposes of this section, special interest motor vehicle means a motor vehicle of any age which is being collected, preserved, restored, or maintained by the owner as a leisure pursuit and not used for general transportation of persons or cargo.

**Source:** Laws 2012, LB216, § 4; Laws 2015, LB231, § 15; Laws 2017, LB263, § 51; Laws 2021, LB113, § 9.  
Operative date August 28, 2021.

**60-3,136 Motor vehicle insurance database; created; powers and duties; Motor Vehicle Insurance Database Task Force; created.**

(1)(a) The motor vehicle insurance database is created. The department shall develop and administer the motor vehicle insurance database which shall include the information provided by insurance companies as required by the department pursuant to sections 60-3,136 to 60-3,139. The motor vehicle insurance database shall be used to facilitate registration of motor vehicles in this state by the department and its agents. The director may contract with a designated agent for the purpose of establishing and operating the motor vehicle insurance database and monitoring compliance with the financial responsibility requirements of such sections.

(b) The department may adopt and promulgate rules and regulations to carry out sections 60-3,136 to 60-3,139. The rules and regulations shall include specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance database, and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance database, as recommended by the Motor Vehicle Insurance Database Task Force created in subsection (2) of this section in its report to the department.

(2)(a) The Motor Vehicle Insurance Database Task Force is created. The Motor Vehicle Insurance Database Task Force shall investigate the best practices of the industry and recommend specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance database and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance database.

(b) The Motor Vehicle Insurance Database Task Force shall consist of:

(i) The Director of Motor Vehicles or his or her designee;

(ii) The Director of Insurance or his or her designee;

(iii) The following members who shall be selected by the Director of Insurance:

(A) One representative of a domestic automobile insurance company or domestic automobile insurance companies;

(B) One representative of an admitted foreign automobile insurance company or admitted foreign automobile insurance companies; and

(C) One representative of insurance producers licensed under the laws of this state; and

(iv) Four members to be selected by the Director of Motor Vehicles.

(c) The requirements of this subsection shall expire on July 1, 2004, except that the director may reconvene the task force at any time thereafter if he or she deems it necessary.

**Source:** Laws 2005, LB 274, § 136; Laws 2016, LB666, § 1.

**60-3,137 Motor vehicle insurance database; information required.**

Each insurance company doing business in this state shall provide information shown on each automobile liability policy issued in this state as required by the department pursuant to sections 60-3,136 to 60-3,139 for inclusion in the motor vehicle insurance database in a form and manner acceptable to the department. Any person who qualifies as a self-insurer under sections 60-562 to 60-564 or any person who provides financial responsibility under sections 75-392 to 75-3,100 shall not be required to provide information to the department for inclusion in the motor vehicle insurance database.

**Source:** Laws 2005, LB 274, § 137; Laws 2007, LB358, § 9; Laws 2009, LB331, § 3; Laws 2020, LB944, § 24.

**60-3,138 Motor vehicle insurance database; information; restrictions.**

Information provided to the department by insurance companies for inclusion in the motor vehicle insurance database created under section 60-3,136 is the property of the insurance company and the department, as the case may be. The department may disclose whether an individual has the required insurance coverage pursuant to the Uniform Motor Vehicle Records Disclosure Act, but in no case shall the department provide any person's insurance coverage information for purposes of resale, for purposes of solicitation, or as bulk listings.

**Source:** Laws 2005, LB 274, § 138.

**Cross References**

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

**60-3,139 Motor vehicle insurance database; immunity.**

(1) The state shall not be liable to any person for gathering, managing, or using information in the motor vehicle insurance database created under section 60-3,136.

(2) No insurance company shall be liable to any person for performing its duties under sections 60-3,136 to 60-3,138, unless and to the extent the insurance company commits a willful and wanton act or omission.

**Source:** Laws 2005, LB 274, § 139.

**60-3,140 Registration fees; to whom payable.**

All fees for the registration of motor vehicles or trailers, unless otherwise expressly provided, shall be paid to the county treasurer of the county in which the motor vehicle or trailer has situs. If registered pursuant to section 60-3,198, all fees shall be paid to the department.

**Source:** Laws 2005, LB 274, § 140; Laws 2012, LB801, § 77.

**60-3,141 Agents of department; fees; collection.**

(1) The various county treasurers shall act as agents for the department in the collection of all motor vehicle taxes, motor vehicle fees, and registration fees.

An approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 may collect all such taxes and fees as agent for the appropriate county treasurer and the department in a manner provided by such system.

(2) While acting as agents pursuant to subsection (1) of this section, the county treasurers or any approved licensed dealers participating in the electronic dealer services system shall in addition to the taxes and registration fees collect one dollar and fifty cents for each registration of a motor vehicle or trailer of a resident of the State of Nebraska and four dollars and fifty cents for each registration of a motor vehicle or trailer of a nonresident. The county treasurer shall credit such additional fees collected by the county treasurer or any approved licensed dealer participating in the electronic dealer services system to the county general fund in a manner provided by such system.

(3) The county treasurers shall transmit all motor vehicle fees and registration fees collected pursuant to this section to the State Treasurer on or before the twentieth day of each month and at such other times as the State Treasurer requires for credit to the Motor Vehicle Fee Fund and the Highway Trust Fund, respectively, except as provided in section 60-3,156. Any county treasurer who fails to transfer to the State Treasurer the amount due the state at the times required in this section shall pay interest at the rate specified in section 45-104.02, as such rate may be adjusted from time to time, from the time the motor vehicle fees and registration fees become due until paid.

(4) If a registrant requests delivery of license plates, registration certificates, or validation decals by mail, the county treasurer may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant.

**Source:** Laws 2005, LB 274, § 141; Laws 2007, LB286, § 47; Laws 2012, LB801, § 78; Laws 2013, LB207, § 2; Laws 2017, LB263, § 52.

**60-3,142 Fees; retention by county.**

The various county treasurers acting as agents for the department in collection of the fees shall retain five percent of each fee collected under section 60-3,112 for credit to the county general fund.

**Source:** Laws 2005, LB 274, § 142; Laws 2007, LB286, § 48; Laws 2012, LB801, § 79.

**60-3,143 Autocycle; passenger motor vehicle; leased motor vehicle; registration fee.**

(1) For autocycles, the registration fee shall be as provided in section 60-3,153.

(2) For every motor vehicle of ten-passenger capacity or less and not used for hire, the registration fee shall be fifteen dollars.

(3) For each motor vehicle having a seating capacity of ten persons or less and used for hire, the registration fee shall be six dollars plus an additional four dollars for every person such motor vehicle is equipped to carry in addition to the driver.

(4) For motor vehicles leased for hire when no driver or chauffeur is furnished by the lessor as part of the consideration paid for by the lessee,

incident to the operation of the leased motor vehicle, the fee shall be fifteen dollars.

**Source:** Laws 2005, LB 274, § 143; Laws 2015, LB231, § 16; Laws 2018, LB909, § 63.

**60-3,144 Buses; registration fees.**

(1) For buses used exclusively to carry children to and from school, and other school activities, the registration fee shall be ten dollars.

(2) For buses equipped to carry more than ten persons for hire, the fee shall be based on the weight of such bus. To ascertain the weight, the unladen weight in pounds shall be used. There shall be added to such weight in pounds the number of persons such bus is equipped to carry times two hundred, the sum thereof being the weight of such bus for license purposes. The unladen weight shall be ascertained by scale weighing of the bus fully equipped and as used upon the highways under the supervision of a member of the Nebraska State Patrol or a carrier enforcement officer and certified by such patrol member or carrier enforcement officer to the department or county treasurer. The fee therefor shall be as follows:

(a) If such bus weighs thirty-two thousand pounds and less than thirty-four thousand pounds, it shall be licensed as a twelve-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(b) If such bus weighs thirty thousand pounds and less than thirty-two thousand pounds, it shall be licensed as an eleven-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(c) If such bus weighs twenty-eight thousand pounds and less than thirty thousand pounds, it shall be licensed as a ten-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(d) If such bus weighs twenty-two thousand pounds and less than twenty-eight thousand pounds, it shall be licensed as a nine-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(e) If such bus weighs sixteen thousand pounds and less than twenty-two thousand pounds, it shall be licensed as an eight-ton truck as provided in section 60-3,147 and pay the same fee as therein provided; and

(f) If such bus weighs less than sixteen thousand pounds, it shall be licensed as a five-ton truck as provided in section 60-3,147 and pay the same fee as therein provided, except that upon registration of buses equipped to carry ten passengers or more and engaged entirely in the transportation of passengers for hire within municipalities or in and within a radius of five miles thereof the fee shall be seventy-five dollars, and for buses equipped to carry more than ten passengers and not for hire the registration fee shall be thirty dollars.

(3) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

**Source:** Laws 2005, LB 274, § 144; Laws 2012, LB801, § 80.

**60-3,145 Local trucks; registration fees.**

(1) The registration fee on local trucks shall be based on the gross vehicle weight as provided in section 60-3,147, and local trucks shall be registered at a fee of thirty percent of the commercial motor vehicle registration fee, except

that (a) no local truck shall be registered for a fee of less than eighteen dollars, (b) the registration fee for each truck with a factory-rated capacity of one ton or less shall be eighteen dollars, and (c) commercial pickup trucks with a gross load of over three tons shall be registered for the fee provided for commercial motor vehicles.

(2) Local truck license plates shall display, in addition to the registration number, the designation of local motor vehicles.

**Source:** Laws 2005, LB 274, § 145; Laws 2007, LB286, § 49.

**60-3,146 Farm trucks; registration fees.**

(1) For the registration of farm trucks, except for trucks or combinations of trucks or truck-tractors and trailers having a gross vehicle weight exceeding sixteen tons, the registration fee shall be eighteen dollars for up to and including five tons gross vehicle weight, and in excess of five tons the fee shall be twenty-two dollars.

(2) For a truck or a combination of a truck or truck-tractor and trailer weighing in excess of sixteen tons registered as a farm truck, except as provided in sections 60-3,111 and 60-3,151, the registration fee shall be based upon the gross vehicle weight. The registration fee on such trucks weighing in excess of sixteen tons shall be at the following rates: For a gross weight in excess of sixteen tons up to and including twenty tons, forty dollars plus five dollars for each ton of gross weight over seventeen tons, and for gross weight exceeding twenty tons, sixty-five dollars plus ten dollars for each ton of gross weight over twenty tons.

(3) Farm truck license plates shall display, in addition to the registration number, the designation farm and the words NOT FOR HIRE.

(4) Farm trucks with a gross weight of over sixteen tons license plates shall also display the weight that such farm truck is licensed for, using a decal on the license plates in letters and numerals of such size and design as shall be determined and issued by the department.

**Source:** Laws 2005, LB 274, § 146.

**60-3,147 Commercial motor vehicles; public power district motor vehicles; metropolitan utilities district motor vehicles; registration fees.**

(1) The registration fee on commercial motor vehicles, public power district motor vehicles, and, beginning January 1, 2023, metropolitan utilities district motor vehicles, except those motor vehicles registered under section 60-3,198, shall be based upon the gross vehicle weight, not to exceed the maximum authorized by section 60-6,294.

(2) The registration fee on commercial motor vehicles, public power district motor vehicles, and, beginning January 1, 2023, metropolitan utilities district motor vehicles, except for motor vehicles and trailers registered under section 60-3,198, shall be based on the gross vehicle weight on such commercial motor vehicles, public power district motor vehicles, or metropolitan utilities district motor vehicles plus the gross vehicle weight of any trailer or combination with which it is operated, except that for the purpose of determining the registration fee, the gross vehicle weight of a commercial motor vehicle towing or hauling a disabled or wrecked motor vehicle properly registered for use on the highways shall be only the gross vehicle weight of the towing commercial motor vehicle

fully equipped and not including the weight of the motor vehicle being towed or hauled.

(3) Except as provided in subsection (4) of this section, the registration fee on such commercial motor vehicles, public power district motor vehicles, and, beginning January 1, 2023, metropolitan utilities district motor vehicles shall be at the following rates:

- (a) For a gross vehicle weight of three tons or less, eighteen dollars;
- (b) For a gross vehicle weight exceeding three tons and not exceeding four tons, twenty-five dollars;
- (c) For a gross vehicle weight exceeding four tons and not exceeding five tons, thirty-five dollars;
- (d) For a gross vehicle weight exceeding five tons and not exceeding six tons, sixty dollars;
- (e) For a gross vehicle weight exceeding six tons but not exceeding seven tons, eighty-five dollars; and
- (f) For a gross vehicle weight in excess of seven tons, the fee shall be that for a commercial motor vehicle, public power district motor vehicle, or metropolitan utilities district motor vehicle having a gross vehicle weight of seven tons and, in addition thereto, twenty-five dollars for each ton of gross vehicle weight over seven tons.

(4)(a) For fractional tons in excess of the twenty percent or the tolerance of one thousand pounds, as provided in section 60-6,300, the fee shall be computed on the basis of the next higher bracket.

(b) The fees provided by this section shall be reduced ten percent for motor vehicles used exclusively for the transportation of agricultural products.

(c) Fees for commercial motor vehicles, public power district motor vehicles, or, beginning January 1, 2023, metropolitan utilities district motor vehicles with a gross vehicle weight in excess of thirty-six tons shall be increased by twenty percent for all such commercial motor vehicles, public power district motor vehicles, or metropolitan utilities district motor vehicles operated on any highway not a part of the National System of Interstate and Defense Highways.

(5)(a) Such fee may be paid one-half at the time of registration and one-half on the first day of the seventh month of the registration period when the license fee exceeds two hundred ten dollars. When the second half is paid, the county treasurer shall furnish a registration certificate and license plates issued by the department which shall be displayed on such commercial motor vehicle in the manner provided by law. In addition to the registration fee, the department shall collect a sufficient fee to cover the cost of issuing the certificate and license plates.

(b) If such second half is not paid within thirty days following the first day of the seventh month, the registration of such commercial motor vehicle shall be canceled and the registration certificate and license plates shall be returned to the county treasurer.

(c) Such fee shall be paid prior to any subsequent registration or renewal of registration.

(6) Except as provided in section 60-3,228, license plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.



(7) A license plate or plates issued to a commercial motor vehicle with a gross weight of five tons or over shall display, in addition to the registration number, the weight that the commercial motor vehicle is licensed for, using a decal on the license plate or plates of the commercial motor vehicle in letters and numerals of such size and design as shall be determined and issued by the department.

**Source:** Laws 2005, LB 274, § 147; Laws 2007, LB286, § 50; Laws 2012, LB801, § 81; Laws 2016, LB783, § 8; Laws 2018, LB909, § 64.

Registration fee is based upon the load to be hauled. *Aulner v. State*, 160 Neb. 741, 71 N.W.2d 305 (1955).

**60-3,148 Commercial motor vehicle; public power district motor vehicle; metropolitan utilities district motor vehicle; increase of gross vehicle weight; where allowed.**

(1) This subsection applies until January 1, 2023. No owner of a commercial motor vehicle or public power district motor vehicle shall be permitted to increase the gross vehicle weight for which such commercial motor vehicle or public power district motor vehicle is registered except at the office of the county treasurer in the county where such commercial motor vehicle or public power district motor vehicle is currently registered unless the need for such increase occurs when such commercial motor vehicle is more than one hundred miles from the county seat of such county or the public power district motor vehicle is more than one hundred miles from its base location, unless authorized to do so by the Nebraska State Patrol or authorized state scale examiner as an emergency.

(2) This subsection applies beginning January 1, 2023. No owner of a commercial motor vehicle, metropolitan utilities district motor vehicle, or public power district motor vehicle shall be permitted to increase the gross vehicle weight for which such commercial motor vehicle, metropolitan utilities district motor vehicle, or public power district motor vehicle is registered except at the office of the county treasurer in the county where such commercial motor vehicle, metropolitan utilities district motor vehicle, or public power district motor vehicle is currently registered unless the need for such increase occurs when such commercial motor vehicle is more than one hundred miles from the county seat of such county or the metropolitan utilities district motor vehicle or public power district motor vehicle is more than one hundred miles from its base location, unless authorized to do so by the Nebraska State Patrol or authorized state scale examiner as an emergency.

**Source:** Laws 2005, LB 274, § 148; Laws 2012, LB801, § 82; Laws 2016, LB783, § 9; Laws 2018, LB909, § 65.

**60-3,149 Soil and water conservation vehicles; registration fee.**

(1) For the registration of trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction, the registration fee shall be one-half of the rate for similar commercial motor vehicles registered under section 60-3,147, except that no commercial motor vehicle or commercial trailer registered under this section shall be registered for a fee of less than eighteen dollars.

(2) Such license plates shall display, in addition to the registration number, the letter A.

**Source:** Laws 2005, LB 274, § 149.

**60-3,150 Truck-tractor and semitrailer; commercial trailer; registration fee.**

For registration purposes, a truck-tractor and semitrailer unit and a commercial trailer shall be considered as separate units. The registration fee of the truck-tractor shall be the fee provided for commercial motor vehicles. Each semitrailer and each commercial trailer shall be registered upon the payment of a fee of one dollar. The department shall provide an appropriate license plate or, when appropriate, validation decal to identify such semitrailers. If any truck or truck-tractor, operated under the classification designated as local, farm, or A or with plates issued under section 60-3,113 is operated outside of the limits of its respective classification, it shall thereupon come under the classification of commercial motor vehicle.

**Source:** Laws 2005, LB 274, § 150; Laws 2007, LB286, § 51.

**60-3,151 Trailers; recreational vehicles; registration fee.**

(1) For the registration of any commercial trailer or semitrailer, the fee shall be one dollar.

(2) The fee for utility trailers shall be one dollar for each one thousand pounds gross vehicle weight or fraction thereof, up to and including nine thousand pounds. Utility trailer license plates shall display, in addition to the registration number, the letter X. Trailers other than farm trailers of more than nine thousand pounds must be registered as commercial trailers.

(3) The fee for cabin trailers having gross vehicle weight of one thousand pounds or less shall be nine dollars and more than one thousand pounds, but less than two thousand pounds, shall be twelve dollars. Cabin trailers having a gross vehicle weight of two thousand pounds or more shall be registered for a fee of fifteen dollars.

(4) Recreational vehicles having a gross vehicle weight of eight thousand pounds or less shall be registered for a fee of eighteen dollars, those having a gross vehicle weight of more than eight thousand pounds but less than twelve thousand pounds shall be registered for thirty dollars, and those having a gross vehicle weight of twelve thousand pounds or over shall be registered for forty-two dollars. When living quarters are added to a registered truck, a recreational vehicle registration may be obtained without surrender of the truck registration, in which event both the truck and recreational vehicle license plates shall be displayed on the vehicle. Recreational vehicle license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

(5) Farm trailers shall be licensed for a fee of one dollar, except that when a farm trailer is used with a registered farm truck, such farm trailer may, at the option of the owner, be registered as a separate unit for a fee of three dollars per ton gross vehicle weight and, if so registered, shall not be considered a truck and trailer combination for purposes of sections 60-3,145 and 60-3,146. Farm trailer license plates shall display, in addition to the registration number, the letter X.

(6) Fertilizer trailers shall be registered for a fee of one dollar. Fertilizer trailer license plates shall display, in addition to the registration number, the letter X.

(7) Trailers used to haul poles and cable reels owned and operated exclusively by public utility companies shall be licensed at a fee based on two dollars for each one-thousand-pound load to be hauled or any fraction thereof, and such load shall not exceed sixteen thousand pounds.

**Source:** Laws 2005, LB 274, § 151; Laws 2016, LB783, § 10; Laws 2017, LB263, § 53.

**60-3,152 Ambulances; hearses; registration fee.**

For all ambulances, except publicly owned ambulances, and hearses, the registration fee shall be fifteen dollars.

**Source:** Laws 2005, LB 274, § 152.

**60-3,153 Motorcycle; registration fee.**

For the registration of every motorcycle, the fee shall be six dollars.

**Source:** Laws 2005, LB 274, § 153.

**60-3,154 Taxicabs; registration fee.**

For taxicabs, used for hire, duly licensed by the governing authorities of cities and villages, the registration fee shall be fifteen dollars.

**Source:** Laws 2005, LB 274, § 154.

**60-3,155 Well-boring apparatus and well-servicing equipment; registration fee.**

For the registration of well-boring apparatus and well-servicing equipment, the registration fee shall be one-twelfth of the regular commercial registration fee as determined by gross vehicle weight. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

**Source:** Laws 2005, LB 274, § 155.

**60-3,156 Additional fees.**

In addition to the registration fees for motor vehicles and trailers, the county treasurer or his or her agent shall collect:

(1) Two dollars for each certificate issued and shall remit two dollars of each additional fee collected to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund;

(2) Fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the Nebraska Emergency Medical System Operations Fund; and

(3) One dollar and fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the State Recreation Road Fund.

**Source:** Laws 2005, LB 274, § 156; Laws 2012, LB801, § 83; Laws 2013, LB207, § 3.

**60-3,157 Lost or mutilated license plate or registration certificate; duplicate; fees.**

If a license plate or registration certificate is lost or mutilated or has become illegible, the person to whom such license plate and registration certificate has been issued shall immediately apply to the county treasurer for a duplicate registration certificate or for new license plates, accompanying his or her application with a fee of one dollar for a duplicate registration certificate and a fee of two dollars and fifty cents for a duplicate or replacement license plate. No fee shall be required under this section if the vehicle or trailer was reported stolen under section 60-178.

**Source:** Laws 2005, LB 274, § 157; Laws 2009, LB175, § 2; Laws 2012, LB801, § 84.

**60-3,158 Methods of payment authorized.**

A county treasurer or his or her agent may accept credit cards, charge cards, debit cards, or electronic funds transfers as a means of payment for registration pursuant to section 13-609.

**Source:** Laws 2005, LB 274, § 158; Laws 2012, LB801, § 85.

**60-3,159 Registration fees; fees for previous years.**

Upon application to register any motor vehicle or trailer, no registration fee shall be required to be paid thereon for any previous registration period during which such motor vehicle or trailer was not at any time driven or used upon any highway within this state, and the person desiring to register such motor vehicle or trailer without payment of fees for previous registration periods shall file with the county treasurer an affidavit showing where, when, and for how long such motor vehicle or trailer was stored and that the same was not used in this state during such registration period or periods, and upon receipt thereof the county treasurer shall issue a registration certificate.

**Source:** Laws 2005, LB 274, § 159; Laws 2012, LB801, § 86.

**60-3,160 Governmental vehicle; exempt from fee.**

No registration fee shall be charged for any motor vehicle or trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system.

**Source:** Laws 2005, LB 274, § 160.

## Cross References

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

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**60-3,161 Transferred to section 60-1506.****60-3,162 Certificate of registration; improper issuance; revocation.**

The department shall, upon a sworn complaint in writing of any person, investigate whether a certificate of registration has been issued on a motor vehicle or trailer exceeding the length, height, or width provided by law or issued contrary to any law of this state. If the department determines from the investigation that such certificate of registration has been improperly issued, it shall have power to revoke such certificate of registration.

**Source:** Laws 2005, LB 274, § 162; Laws 2019, LB270, § 24.

**60-3,163 Repealed. Laws 2012, LB 751, § 57.**

**60-3,164 Operation or parking of unregistered vehicle; penalty.**

(1) Any person who operates or parks a motor vehicle or who tows or parks a trailer on any highway, which motor vehicle or trailer has not been registered as required by section 60-362, shall be subject to the penalty provided in section 60-3,170.

(2) A person who parks a motor vehicle or tows a trailer on any highway, which motor vehicle or trailer has been properly registered in this state but such registration has expired, shall not be in violation of this section or section 60-362 or subject to the penalty provided in section 60-3,170, unless thirty days have passed from the expiration of the prior registration.

**Source:** Laws 2005, LB 274, § 164.

**60-3,165 Registration; noncompliance; citation; effect.**

If a citation is issued to an owner or operator of a motor vehicle or trailer for a violation of section 60-362 and the owner properly registers and licenses the motor vehicle or trailer not in compliance and pays all taxes and fees due and the owner or operator provides proof of such registration to the prosecuting attorney within ten days after the issuance of the citation, no prosecution for the offense cited shall occur.

**Source:** Laws 2005, LB 274, § 165.

**60-3,166 Law enforcement officers; arrest violators; violations; penalty; payment of taxes and fees.**

It shall be the duty of all law enforcement officers to arrest all violators of any of the provisions of sections 60-373, 60-374, 60-375, 60-376, 60-378, 60-379, and 60-3,114 to 60-3,116. Any person, firm, or corporation, including any motor vehicle, trailer, or boat dealer or manufacturer, who fails to comply with such provisions shall be guilty of a Class V misdemeanor and, in addition thereto, shall pay the county treasurer any and all motor vehicle taxes and fees imposed in sections 60-3,185 and 60-3,190, registration fees, or certification fees due had the motor vehicle or trailer been properly registered or certified according to law.

**Source:** Laws 2005, LB 274, § 166; Laws 2012, LB801, § 88.

**60-3,167 Financial responsibility; owner; requirements; prohibited acts; violation; penalty; dismissal of citation; when.**

(1) It shall be unlawful for any owner of a motor vehicle or trailer which is being operated or towed with In Transit stickers pursuant to section 60-376, which is being operated or towed pursuant to section 60-365 or 60-369, or

which is required to be registered in this state and which is operated or towed on a public highway of this state to allow the operation or towing of the motor vehicle or trailer on a public highway of this state without having a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility. The owner shall be presumed to know of the operation or towing of his or her motor vehicle or trailer on a highway of this state in violation of this section when the motor vehicle or trailer is being operated or towed by a person other than the owner. An owner of a motor vehicle or trailer who operates or tows the motor vehicle or trailer or allows the operation or towing of the motor vehicle or trailer in violation of this section shall be guilty of a Class II misdemeanor and shall be advised by the court that his or her motor vehicle operator's license, motor vehicle certificate of registration, and license plates will be suspended by the department until he or she complies with sections 60-505.02 and 60-528. Upon conviction the owner shall have his or her motor vehicle operator's license, motor vehicle certificate of registration, and license plates suspended by the department until he or she complies with sections 60-505.02 and 60-528. The owner shall also be required to comply with section 60-528 for a continuous period of three years after the violation. This subsection shall not apply to motor vehicles or trailers registered in another state.

(2) An owner who is unable to produce a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility upon the request of a law enforcement officer shall be allowed ten days after the date of the request to produce proof to the appropriate prosecutor or county attorney that a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle or trailer at the time of such request. Upon presentation of such proof, the citation shall be dismissed by the prosecutor or county attorney without cost to the owner and no prosecution for the offense cited shall occur.

(3) The department shall, for any person convicted for a violation of this section, reinstate such person's operator's license, motor vehicle certificate of registration, and license plates and rescind any order requiring such person to comply with section 60-528 without cost to such person upon presentation to the director that, at the time such person was cited for a violation of this section, a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle or trailer at the time the citation was issued.

**Source:** Laws 2005, LB 274, § 167.

**60-3,168 Proof of financial responsibility required; violation; penalty.**

It shall be unlawful for any owner to pay the required registration fees when the owner does not, at the time of paying the fees or during the entire registration period, have or keep in effect a current and effective automobile liability policy or proof of financial responsibility. Any person violating this section shall be guilty of a Class IV misdemeanor. The penalty shall be mandatory and shall not be suspended by a court.

**Source:** Laws 2005, LB 274, § 168.

**60-3,169 Farm truck; unauthorized use; penalty.**

Any person using a truck or combination of a truck or truck-tractor and trailer registered as a farm truck pursuant to section 60-3,146 in violation of the uses authorized shall be guilty of a Class IV misdemeanor and shall be required to register such truck or combination of a truck or truck-tractor and trailer as a commercial motor vehicle or commercial trailer for the entire registration period in which the violation occurred.

**Source:** Laws 2005, LB 274, § 169.

**60-3,170 Violations; penalty.**

Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of the Motor Vehicle Registration Act for which a penalty is not otherwise provided shall be guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 274, § 170.

**60-3,171 Fraud; penalty.**

Any person who registers or causes to be registered any motor vehicle or trailer in the name of any person other than the owner thereof, who gives a false or fictitious name or false or fictitious residential and mailing address of the registrant, or who gives false information pursuant to section 60-386 in any application for registration of a motor vehicle or trailer shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 274, § 171.

**60-3,172 Registration in incorrect county; penalty.**

Any person applying for a motor vehicle or trailer registration in any county or location other than that specified in section 60-385 or 60-3,198 shall be deemed guilty of a Class IV misdemeanor.

**Source:** Laws 2005, LB 274, § 172.

**60-3,173 Commercial trucks and truck-tractors; commercial vehicles; prohibited acts; penalty.**

Any person who fails to return a registration certificate and license plate when required to do so under subdivision (5)(b) of section 60-3,147 and any person, firm, association, or corporation who otherwise violates section 60-3,147 or 60-3,148 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 2005, LB 274, § 173.

**60-3,174 Well-boring apparatus and well-servicing equipment; prohibited acts; penalty.**

Any person using a motor vehicle or trailer registered as well-boring apparatus and well-servicing equipment for any purpose other than that for which the special equipment license plate was issued shall be guilty of a Class IV misdemeanor and shall be required to register such motor vehicle or trailer as a commercial motor vehicle or commercial trailer for the entire year in which the violation occurred.

**Source:** Laws 2005, LB 274, § 174.

**60-3,175 Historical vehicles; prohibited acts; penalty.**

It shall be unlawful to own or operate a motor vehicle or trailer with historical license plates in violation of section 60-3,130, 60-3,131, or 60-3,134. Upon conviction of a violation of any provision of such sections, a person shall be guilty of a Class V misdemeanor.

**Source:** Laws 2005, LB 274, § 175; Laws 2006, LB 663, § 34.

**60-3,176 Undercover plates; prohibited acts; penalty.**

Any person who receives information pertaining to undercover license plates in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 274, § 176.

**60-3,177 Nonresident vehicles; prohibited acts.**

It shall be unlawful to operate trucks, truck-tractors, trailers, or buses owned by nonresidents who are not in compliance with sections 60-3,178 to 60-3,182 or any agreement executed under the authority granted in sections 60-3,180 to 60-3,182.

**Source:** Laws 2005, LB 274, § 177.

**60-3,178 Nonresident vehicles; requirements; exception; reciprocity.**

Trucks, truck-tractors, trailers, or buses, from a jurisdiction other than Nebraska, entering Nebraska shall be required to comply with all the laws and regulations of any nature imposed on Nebraska trucks, truck-tractors, trailers, or buses unless the jurisdiction in which such trucks, truck-tractors, trailers, or buses are domiciled grants reciprocity comparable to that extended by the laws of Nebraska.

**Source:** Laws 2005, LB 274, § 178.

Reciprocity with other states on licensing of truck-tractors and trailers is provided under specified conditions. Ashton v. State, 173 Neb. 78, 112 N.W.2d 540 (1961).

**60-3,179 Nonresident vehicles; nonreciprocal jurisdiction; fees.**

In case a jurisdiction is not reciprocal as to license fees on trucks, truck-tractors, trailers, or buses, the owners of nonresident trucks, truck-tractors, trailers, or buses from those jurisdictions shall pay the same license fees as are charged residents of this state. The owners of all trucks, truck-tractors, trailers, or buses from other jurisdictions doing intrajurisdiction hauling in this state shall pay the same registration fees as those paid by residents of this state unless such trucks, truck-tractors, trailers, or buses are registered as a part of a fleet in interjurisdiction commerce as provided in section 60-3,198.

**Source:** Laws 2005, LB 274, § 179.

**60-3,180 Nonresident vehicles; reciprocal agreements authorized; terms and conditions; revision; absence of agreement; effect.**

(1) In order to effect the purposes of sections 60-3,178, 60-3,179, and 60-3,198, the director shall have the power, duty, and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, including states, districts, territories, or possessions of the United



States and foreign countries, states, or provinces, granting to trucks, truck-tractors, trailers, or buses or owners of trucks, truck-tractors, trailers, or buses which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges, and exemptions from the payment, wholly or partially, of any fees or other charges imposed upon such trucks, truck-tractors, trailers, or buses or owners with respect to the operation or ownership of such trucks, truck-tractors, trailers, or buses under the laws of this state. Such agreements or arrangements shall provide that trucks, truck-tractors, trailers, or buses registered or licensed in this state when operated upon the highways of such other jurisdictions shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to trucks, truck-tractors, trailers, or buses from such jurisdictions in this state. Such agreements may be revised or replaced by new agreements from time to time in order to promote greater uniformity among the jurisdictions. The director may withdraw from any agreement when he or she determines that it is for the best interest of the State of Nebraska upon thirty days' notice.

(2) Notwithstanding any provisions of the Nebraska statutes to the contrary or inconsistent herewith, such agreements may provide, with respect to resident or nonresident fleets of apportionable vehicles which are engaged in interjurisdiction and intrajurisdiction commerce, that the registrations of such fleets can be apportioned between this state and other jurisdictions in which such fleets operate in accordance with the method set out in section 60-3,198. A Nebraska-based fleet owner may include trucks, truck-tractors, trailers, and buses in such apportionable fleet by listing them in an application filed pursuant to section 60-3,198, and any trucks, truck-tractors, trailers, and buses so included shall be eligible for permanent license plates issued pursuant to section 60-3,203. The registration procedure required by section 60-3,198 shall be the only such registration required, and when the fees required by such section and section 60-3,203 if applicable have been paid, the trucks, truck-tractors, trailers, and buses listed on the application shall be duly registered as part of such Nebraska-based fleet and shall be considered part of a Nebraska-based fleet for purposes of taxation.

(3) In the absence of an agreement or arrangement with any jurisdiction, the director is authorized to examine the laws and requirements of such jurisdiction and to declare the extent and nature of exemptions, benefits, and privileges to be extended to trucks, truck-tractors, trailers, and buses registered in such jurisdiction or to the owners or operators of such trucks, truck-tractors, trailers, and buses.

When no written agreement or arrangement has been entered into with another jurisdiction or declaration issued pertaining thereto, any trucks, truck-tractors, trailers, and buses properly registered in such jurisdiction, and for which evidence of compliance is supplied, may be operated in this state and shall receive the same exemptions, benefits, and privileges granted by such other jurisdiction to trucks, truck-tractors, trailers, and buses registered in this state.

**Source:** Laws 2005, LB 274, § 180.

Where truck-tractor was licensed in Michigan with whom Nebraska maintained reciprocity, no license fees were required even though trailer was licensed in Iowa. Ashton v. State, 173 Neb. 78, 112 N.W.2d 540 (1961).

**60-3,181 Truck, truck-tractor, trailer, or bus; no additional registration or license fees required; when.**

(1) When a truck, truck-tractor, trailer, or bus has been duly registered in any jurisdiction, including those that are part of a Nebraska-based fleet registered pursuant to section 60-3,198, no additional registration or license fees, except as provided in section 60-3,203 if applicable, shall be required in this state when such truck, truck-tractor, trailer, or bus is operated in combination with any truck, truck-tractor, trailer, or bus properly licensed or registered in accordance with sections 60-3,179 to 60-3,182 and 60-3,198 or agreements, arrangements, or declarations pursuant to such sections.

(2) Properly registered means a truck, truck-tractor, trailer, or bus licensed or registered in one of the following: (a) The jurisdiction where the person registering the truck, truck-tractor, trailer, or bus has his or her legal residence; (b) the jurisdiction in which a truck, truck-tractor, trailer, or bus is registered, when the operation in which such truck, truck-tractor, trailer, or bus is used has a principal place of business therein, and from or in which the truck, truck-tractor, trailer, or bus is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled and the truck, truck-tractor, trailer, or bus is assigned to such principal place of business; or (c) the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration, the person registering the truck, truck-tractor, trailer, or bus has licensed the truck, truck-tractor, trailer, or bus as required by such jurisdiction.

**Source:** Laws 2005, LB 274, § 181.

**60-3,182 Agreements, arrangements, declarations, and amendments; requirements.**

(1) All agreements, arrangements, declarations, and amendments authorized by sections 60-3,179 to 60-3,182 and 60-3,198 shall be in writing and shall become effective when filed in the office of the director.

(2) Agreements or arrangements entered into or declarations issued under the authority of sections 60-3,179 to 60-3,182 may contain provisions denying exemptions, benefits, and privileges granted in such agreements, arrangements, or declarations to any truck, truck-tractor, trailer, or bus which is in violation of conditions stated in such agreements, arrangements, or declarations.

**Source:** Laws 2005, LB 274, § 182.

**60-3,183 Registration under International Registration Plan Act; disciplinary actions; procedure; enforcement.**

(1) The director may revoke, suspend, cancel, or refuse to issue or renew a registration certificate under sections 60-3,198 to 60-3,203:

(a) If the ability of the applicant or registration certificate holder to operate has been terminated or denied by a federal agency, upon receipt of notice of the termination or denial under the federal Performance and Registration Information Systems Management Program;

(b) If the applicant has failed to disclose material information required on the application or if the applicant has made a materially false statement on the application; or

(c) If the applicant has applied for the purpose of avoiding a suspension, revocation, cancellation, or refusal to issue or renew a registration certificate for the real party in interest or if the applicant's business is operated, managed,

or otherwise controlled by or affiliated with a person or entity who or which is ineligible for registration, including the applicant entity, a relative, a family member, a corporate officer, or a shareholder.

(2) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates to the department. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

**Source:** Laws 2005, LB 274, § 183; Laws 2006, LB 853, § 3; Laws 2021, LB149, § 7.  
Effective date August 28, 2021.

**60-3,184 Motor vehicle tax and fee; terms, defined.**

For purposes of sections 60-3,184 to 60-3,190:

- (1) Automobile means passenger cars, trucks, utility vehicles, and vans up to and including seven tons;
- (2) Motor vehicle means every motor vehicle, trailer, and semitrailer subject to the payment of registration fees or permit fees under the laws of this state;
- (3) Motor vehicle fee means the fee imposed upon motor vehicles under section 60-3,190;
- (4) Motor vehicle tax means the tax imposed upon motor vehicles under section 60-3,185; and
- (5) Registration period means the period from the date of registration pursuant to section 60-392 to the first day of the month following one year after such date.

**Source:** Laws 2005, LB 274, § 184; Laws 2007, LB286, § 52; Laws 2017, LB263, § 54.

**60-3,185 Motor vehicle tax; exemptions.**

A motor vehicle tax is imposed on motor vehicles registered for operation upon the highways of this state, except:

- (1) Motor vehicles exempt from the registration fee in section 60-3,160;
- (2) One motor vehicle owned and used for his or her personal transportation by a disabled or blind veteran of the United States Armed Forces as defined in section 77-202.23 whose disability or blindness is recognized by the United States Department of Veterans Affairs and who was discharged or otherwise separated with a characterization of honorable if an application for the exemption has been approved under subsection (1) of section 60-3,189;
- (3) Motor vehicles owned by Indians who are members of an Indian tribe;
- (4) Motor vehicles owned by a member of the United States Armed Forces serving in this state in compliance with military or naval orders or his or her spouse if such servicemember or spouse is a resident of a state other than Nebraska;
- (5) Motor vehicles owned by the state and its governmental subdivisions and exempt as provided in subdivision (1)(a) or (b) of section 77-202;

(6) Motor vehicles owned and used exclusively by an organization or society qualified for a tax exemption provided in subdivision (1)(c) or (d) of section 77-202 if an application for the exemption provided in this subdivision has been approved under subsection (2) of section 60-3,189; and

(7) Trucks, trailers, or combinations thereof registered under section 60-3,198.

**Source:** Laws 2005, LB 274, § 185; Laws 2018, LB909, § 66.

**60-3,186 Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition.**

(1) The department shall annually determine the motor vehicle tax on each motor vehicle registered pursuant to section 60-3,187 and shall cause a notice of the amount to be delivered to the registrant. The notice may be delivered to the registrant at the address shown upon his or her registration certificate or the registrant's most recent address according to information received by the department from the National Change of Address program of the United States Postal Service or delivered electronically to the registrant if the registrant has provided electronic contact information to the department. The notice shall be provided on or before the first day of the last month of the registration period.

(2)(a) The motor vehicle tax, motor vehicle fee, registration fee, sales tax, and any other applicable taxes and fees shall be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period. If the motor vehicle being registered has been transferred as a gift or for a nominal amount, any sales tax owed by the transferor on the purchase of the motor vehicle shall have been paid or be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period.

(b) After retaining one percent of the motor vehicle tax proceeds collected for costs incurred by the county treasurer, and after transferring one percent of the motor vehicle tax proceeds collected to the State Treasurer for credit to the Vehicle Title and Registration System Replacement and Maintenance Cash Fund, the remaining motor vehicle tax proceeds shall be allocated to each county, local school system, school district, city, and village in the tax district in which the motor vehicle has situs.

(c)(i) Twenty-two percent of the remaining motor vehicle tax proceeds shall be allocated to the county, (ii) sixty percent shall be allocated to the local school system or school district, and (iii) eighteen percent shall be allocated to the city or village, except that (A) if the tax district is not in a city or village, forty percent shall be allocated to the county, and (B) in counties containing a city of the metropolitan class, eighteen percent shall be allocated to the county and twenty-two percent shall be allocated to the city or village.

(d) The amount allocated to a local school system shall be distributed to school districts in the same manner as property taxes.

(3) Proceeds from the motor vehicle tax shall be treated as property tax revenue for purposes of expenditure limitations, matching of state or federal funds, and other purposes.

**Source:** Laws 2005, LB 274, § 186; Laws 2006, LB 248, § 1; Laws 2007, LB286, § 53; Laws 2012, LB801, § 89; Laws 2013, LB207, § 4; Laws 2016, LB977, § 11.

This section provides for disposition and remittance of highway fund after it has been collected. *Wayne County v. Steele*, 121 Neb. 438, 237 N.W. 288 (1931).

**60-3,187 Motor vehicle tax schedules; calculation of tax.**

- (1) The motor vehicle tax schedules are set out in this section.
- (2) The motor vehicle tax shall be calculated by multiplying the base tax times the fraction which corresponds to the age category of the vehicle as shown in the following table:

YEAR	FRACTION
First	1.00
Second	0.90
Third	0.80
Fourth	0.70
Fifth	0.60
Sixth	0.51
Seventh	0.42
Eighth	0.33
Ninth	0.24
Tenth and Eleventh	0.15
Twelfth and Thirteenth	0.07
Fourteenth and older	0.00

- (3) The base tax shall be:
  - (a) Automobiles, autcycles, and motorcycles — An amount determined using the following table:

Value when new	Base tax
Up to \$ 3,999	\$ 25
\$ 4,000 to \$ 5,999	35
\$ 6,000 to \$ 7,999	45
\$ 8,000 to \$ 9,999	60
\$10,000 to \$11,999	100
\$12,000 to \$13,999	140
\$14,000 to \$15,999	180
\$16,000 to \$17,999	220
\$18,000 to \$19,999	260
\$20,000 to \$21,999	300
\$22,000 to \$23,999	340
\$24,000 to \$25,999	380
\$26,000 to \$27,999	420
\$28,000 to \$29,999	460
\$30,000 to \$31,999	500
\$32,000 to \$33,999	540
\$34,000 to \$35,999	580
\$36,000 to \$37,999	620
\$38,000 to \$39,999	660
\$40,000 to \$41,999	700
\$42,000 to \$43,999	740
\$44,000 to \$45,999	780
\$46,000 to \$47,999	820
\$48,000 to \$49,999	860
\$50,000 to \$51,999	900
\$52,000 to \$53,999	940

MOTOR VEHICLES

\$54,000 to \$55,999	980
\$56,000 to \$57,999	1,020
\$58,000 to \$59,999	1,060
\$60,000 to \$61,999	1,100
\$62,000 to \$63,999	1,140
\$64,000 to \$65,999	1,180
\$66,000 to \$67,999	1,220
\$68,000 to \$69,999	1,260
\$70,000 to \$71,999	1,300
\$72,000 to \$73,999	1,340
\$74,000 to \$75,999	1,380
\$76,000 to \$77,999	1,420
\$78,000 to \$79,999	1,460
\$80,000 to \$81,999	1,500
\$82,000 to \$83,999	1,540
\$84,000 to \$85,999	1,580
\$86,000 to \$87,999	1,620
\$88,000 to \$89,999	1,660
\$90,000 to \$91,999	1,700
\$92,000 to \$93,999	1,740
\$94,000 to \$95,999	1,780
\$96,000 to \$97,999	1,820
\$98,000 to \$99,999	1,860
\$100,000 and over	1,900

- (b) Assembled automobiles — \$60
- (c) Assembled motorcycles other than autocycles — \$25
- (d) Cabin trailers, up to one thousand pounds — \$10
- (e) Cabin trailers, one thousand pounds and over and less than two thousand pounds — \$25
- (f) Cabin trailers, two thousand pounds and over — \$40
- (g) Recreational vehicles, less than eight thousand pounds — \$160
- (h) Recreational vehicles, eight thousand pounds and over and less than twelve thousand pounds — \$410
- (i) Recreational vehicles, twelve thousand pounds and over — \$860
- (j) Assembled recreational vehicles and buses shall follow the schedules for body type and registered weight
- (k) Trucks — Over seven tons and less than ten tons — \$360
- (l) Trucks — Ten tons and over and less than thirteen tons — \$560
- (m) Trucks — Thirteen tons and over and less than sixteen tons — \$760
- (n) Trucks — Sixteen tons and over and less than twenty-five tons — \$960
- (o) Trucks — Twenty-five tons and over — \$1,160
- (p) Buses — \$360
- (q) Trailers other than semitrailers — \$10
- (r) Semitrailers — \$110
- (s) Former military vehicles — \$50
- (t) Minitrucks — \$50
- (u) Low-speed vehicles — \$50

(4) For purposes of subsection (3) of this section, truck means all trucks and combinations of trucks except those trucks, trailers, or combinations thereof registered under section 60-3,198, and the tax is based on the gross vehicle weight rating as reported by the manufacturer.

(5) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(6) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle tax in the first registration period and ninety-five percent of the initial motor vehicle tax in the second registration period.

(7) Assembled cabin trailers, assembled recreational vehicles, and assembled buses shall be designated as sixth-year motor vehicles in their first year of registration for purposes of the schedules.

(8) When a motor vehicle is registered which is required to have a title branded as previous salvage pursuant to section 60-174, the motor vehicle tax shall be reduced by twenty-five percent.

**Source:** Laws 2005, LB 274, § 187; Laws 2006, LB 248, § 2; Laws 2006, LB 765, § 7; Laws 2010, LB650, § 28; Laws 2011, LB289, § 22; Laws 2015, LB231, § 17; Laws 2018, LB909, § 67; Laws 2019, LB156, § 11; Laws 2019, LB270, § 25.

**60-3,188 Motor vehicle tax; valuation of vehicles; department; duties.**

(1) The department shall determine motor vehicle manufacturers' suggested retail prices, gross vehicle weight ratings, and vehicle identification numbers using appropriate commercially available electronic information on a system designated by the department.

(2) For purposes of section 60-3,187, the department shall determine the value when new of automobiles and determine the gross vehicle weight ratings of motor vehicles over seven tons. The department shall make a determination for such makes and models of automobiles and motor vehicles already manufactured or being manufactured and shall, as new makes and models of such automobiles and motor vehicles become available to Nebraska residents, continue to make such determinations. The value when new is the manufacturer's suggested retail price for such new automobile or motor vehicle of that year using the manufacturer's body type and model with standard equipment and not including transportation or delivery cost.

(3) Any person or taxing official may, within ten days after a determination has been certified by the department, file objections in writing with the department stating why the determination is incorrect.

(4) Any affected person may file an objection to the determination of the department not more than fifteen days before and not later than thirty days after the registration date. The objection must be filed in writing with the department and state why the determination is incorrect.

(5) Upon the filing of objections the department shall fix a time for a hearing. Any party may introduce evidence in reference to the objections, and the department shall act upon the objections and make a written order, mailed to the objector within seven days after the order. The final decision by the department may be appealed. The appeal shall be to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review

Commission Act within thirty days after the written order. In an appeal, the department's determination of the manufacturer's suggested retail price shall be presumed to be correct and the party challenging the determination shall bear the burden of proving it incorrect.

**Source:** Laws 2005, LB 274, § 188; Laws 2007, LB286, § 54.

**Cross References**

Tax Equalization and Review Commission Act, see section 77-5001.

**60-3,189 Tax exemption; procedure; appeal.**

(1) A veteran of the United States Armed Forces who qualifies for an exemption from the motor vehicle tax under subdivision (2) of section 60-3,185 shall apply for the exemption to the county treasurer not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer shall approve or deny the application and notify the applicant of his or her decision within twenty days after the filing of the application. An applicant may appeal the denial of an application to the county board of equalization within twenty days after the date the notice was mailed.

(2) An organization which qualifies for an exemption from the motor vehicle tax under subdivision (6) of section 60-3,185 shall apply for the exemption to the county treasurer not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. For a newly acquired motor vehicle, an application for exemption must be made within thirty days after the purchase date. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer shall examine the application and recommend either exempt or nonexempt status to the county board of equalization within twenty days after receipt of the application. The county board of equalization, after a hearing on ten days' notice to the applicant and after considering the recommendation of the county treasurer and any other information it may obtain, shall approve or deny the exemption on the basis of law and of rules and regulations adopted and promulgated by the Tax Commissioner within thirty days after the hearing. The county board of equalization shall mail or deliver its final decision to the applicant and the county treasurer within seven days after the date of decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the final decision.

**Source:** Laws 2005, LB 274, § 189; Laws 2007, LB334, § 10; Laws 2012, LB801, § 90.

**Cross References**

Tax Equalization and Review Commission Act, see section 77-5001.

**60-3,190 Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.**

(1) A motor vehicle fee is imposed on all motor vehicles registered for operation in this state. An owner of a motor vehicle which is exempt from the



imposition of a motor vehicle tax pursuant to section 60-3,185 shall also be exempt from the imposition of the motor vehicle fee imposed pursuant to this section.

(2) The department shall annually determine the motor vehicle fee on each motor vehicle registered pursuant to this section and shall cause a notice of the amount to be delivered to the registrant. The notice shall be combined with the notice of the motor vehicle tax required by section 60-3,186.

(3) The motor vehicle fee schedules are set out in this subsection and subsection (4) of this section. Except for automobiles with a value when new of less than \$20,000, and for assembled, reconstructed-designated, and replica-designated automobiles, the fee shall be calculated by multiplying the base fee times the fraction which corresponds to the age category of the automobile as shown in the following table:

YEAR	FRACTION
First through fifth	1.00
Sixth through tenth	.70
Eleventh and over	.35

(4) The base fee shall be:

- (a) Automobiles, with a value when new of less than \$20,000, and assembled, reconstructed-designated, and replica-designated automobiles — \$5
- (b) Automobiles, with a value when new of \$20,000 through \$39,999 — \$20
- (c) Automobiles, with a value when new of \$40,000 or more — \$30
- (d) Motorcycles and autocycles — \$10
- (e) Recreational vehicles and cabin trailers — \$10
- (f) Trucks over seven tons and buses — \$30
- (g) Trailers other than semitrailers — \$10
- (h) Semitrailers — \$30
- (i) Former military vehicles — \$10
- (j) Minitrucks — \$10
- (k) Low-speed vehicles — \$10.

(5) The motor vehicle tax, motor vehicle fee, and registration fee shall be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period. After retaining one percent of the motor vehicle fee collected for costs, the remaining proceeds shall be remitted to the State Treasurer for credit to the Motor Vehicle Fee Fund. The State Treasurer shall return funds from the Motor Vehicle Fee Fund remitted by a county treasurer which are needed for refunds or credits authorized by law.

(6)(a) The Motor Vehicle Fee Fund is created. On or before the last day of each calendar quarter, the State Treasurer shall distribute all funds in the Motor Vehicle Fee Fund as follows: (i) Fifty percent to the county treasurer of each county, amounts in the same proportion as the most recent allocation received by each county from the Highway Allocation Fund; and (ii) fifty percent to the treasurer of each municipality, amounts in the same proportion as the most recent allocation received by each municipality from the Highway Allocation Fund. Any money in the fund available for investment shall be

invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) Funds from the Motor Vehicle Fee Fund shall be considered local revenue available for matching state sources.

(c) All receipts by counties and municipalities from the Motor Vehicle Fee Fund shall be used for road, bridge, and street purposes.

(7) For purposes of subdivisions (4)(a), (b), (c), and (f) of this section, automobiles or trucks includes all trucks and combinations of trucks or truck-tractors, except those trucks, trailers, or semitrailers registered under section 60-3,198, and the fee is based on the gross vehicle weight rating as reported by the manufacturer.

(8) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(9) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle fee for six registration periods.

(10) Assembled vehicles other than assembled, reconstructed-designated, or replica-designated automobiles shall follow the schedules for the motor vehicle body type.

**Source:** Laws 2005, LB 274, § 190; Laws 2007, LB286, § 55; Laws 2010, LB650, § 29; Laws 2011, LB289, § 23; Laws 2012, LB801, § 91; Laws 2013, LB207, § 5; Laws 2015, LB231, § 18; Laws 2018, LB909, § 68; Laws 2019, LB156, § 12.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **60-3,191 Alternative fuel; fee.**

In addition to any other fee required under the Motor Vehicle Registration Act, a fee for registration of each motor vehicle powered by an alternative fuel shall be charged. The fee shall be seventy-five dollars. The fee shall be collected by the county treasurer and remitted to the State Treasurer for credit to the Highway Trust Fund.

**Source:** Laws 2011, LB289, § 24.

#### **60-3,192 International Registration Plan Act; act, how cited.**

Sections 60-3,192 to 60-3,206 shall be known and may be cited as the International Registration Plan Act.

**Source:** Laws 2005, LB 274, § 192.

#### **60-3,193 International Registration Plan Act; purposes of act.**

The purposes of the International Registration Plan Act are to:

(1) Promote and encourage the fullest possible use of the highway system by authorizing registration of fleets of apportionable vehicles and the recognition of apportionable vehicles apportioned in other jurisdictions, thus contributing to the economic and social development and growth of the jurisdictions;

(2) Implement the concept of one registration plate for one vehicle;

(3) Grant exemptions from payment of certain fees when such grants are reciprocal; and

(4) Grant reciprocity to fleets of apportionable vehicles and provide for the continuance of reciprocity granted to those vehicles that are not eligible for apportioned registration under the act.

**Source:** Laws 2005, LB 274, § 193.

**60-3,193.01 International Registration Plan; adopted.**

For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on January 1, 2021.

**Source:** Laws 2008, LB756, § 10; Laws 2009, LB331, § 4; Laws 2010, LB805, § 2; Laws 2011, LB212, § 3; Laws 2012, LB751, § 14; Laws 2013, LB35, § 2; Laws 2014, LB776, § 3; Laws 2015, LB313, § 3; Laws 2016, LB929, § 5; Laws 2017, LB263, § 55; Laws 2018, LB909, § 69; Laws 2019, LB79, § 8; Laws 2020, LB944, § 25; Laws 2021, LB149, § 8.  
Effective date August 28, 2021.

**60-3,194 Director; powers and duties.**

The director shall ratify and do all things necessary to effectuate the International Registration Plan Act with such exceptions as are deemed advisable and such changes as are necessary.

**Source:** Laws 2005, LB 274, § 194.

**60-3,195 Conflict with rules and regulations; effect.**

If any provision of the International Registration Plan Act conflicts with rules and regulations adopted and promulgated by the department, the provisions of the act shall control.

**Source:** Laws 2005, LB 274, § 195.

**60-3,196 Apportionable vehicles; International Registration Plan; effect.**

Apportionable vehicles registered as provided in section 60-3,198 and apportionable vehicles covered under the International Registration Plan shall be deemed fully registered in all jurisdictions where apportioned or granted reciprocity for any type of movement or operation. The registrant must have proper interjurisdiction or intrajurisdiction authority from the appropriate regulatory agency of each jurisdiction of this state if not exempt from regulation by the regulatory agency.

**Source:** Laws 2005, LB 274, § 196; Laws 2006, LB 853, § 4; Laws 2007, LB239, § 3; Laws 2008, LB756, § 14.

**60-3,197 Payment of apportioned fees; effect.**

The payment to the base jurisdiction for all member and cooperating jurisdictions of apportioned fees due under the International Registration Plan Act discharges the responsibility of the registrant for payment of such apportioned fees to individual member and cooperating jurisdictions, except that the base

jurisdiction shall cooperate with other declared jurisdictions in connection with applications and fees paid.

**Source:** Laws 2005, LB 274, § 197.

**60-3,198 Fleet of vehicles in interjurisdiction commerce; registration; exception; application; fees; temporary authority; evidence of registration; proportional registration; removal from fleet; effect; unladen-weight registration; trip permit; fee.**

(1)(a) Any owner engaged in operating a fleet of apportionable vehicles in this state in interjurisdiction commerce may, in lieu of registration of such apportionable vehicles under the general provisions of the Motor Vehicle Registration Act, register and license such fleet for operation in this state by filing a statement and the application required by section 60-3,203 with the Division of Motor Carrier Services of the department. The statement shall be in such form and contain such information as the division requires, declaring the total mileage operated by such vehicles in all jurisdictions and in this state during the preceding year and describing and identifying each such apportionable vehicle to be operated in this state during the ensuing license year.

(b)(i) Until July 1, 2021, upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-two dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska injurisdiction fleet distance.

(ii) Beginning July 1, 2021, and until July 1, 2025, upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-five dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska injurisdiction fleet distance.

(iii) Beginning July 1, 2025, upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-three dollars and fifty cents per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall

notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska jurisdiction fleet distance.

(c) Temporary authority which permits the operation of a fleet or an addition to a fleet in this state while the application is being processed may be issued upon application to the division if necessary to complete processing of the application.

(d) Upon completion of such processing and receipt of the appropriate fees, the division shall issue to the applicant a sufficient number of distinctive registration certificates which provide a list of the jurisdictions in which the apportionable vehicle has been apportioned, the weight for which registered, and such other evidence of registration for display on the apportionable vehicle as the division determines appropriate for each of the apportionable vehicles of his or her fleet, identifying it as a part of an interjurisdiction fleet proportionately registered. Such registration certificates may be displayed as a legible paper copy or electronically as authorized by the department. All fees received as provided in this section shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund.

(e) The apportionable vehicles so registered shall be exempt from all further registration and license fees under the Motor Vehicle Registration Act for movement or operation in the State of Nebraska except as provided in section 60-3,203. The proportional registration and licensing provision of this section shall apply to apportionable vehicles added to such fleets and operated in this state during the license year except with regard to permanent license plates issued under section 60-3,203.

(f) The right of applicants to proportional registration under this section shall be subject to the terms and conditions of any reciprocity agreement, contract, or consent made by the division.

(g) When a nonresident fleet owner has registered his or her apportionable vehicles, his or her apportionable vehicles shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce when the jurisdiction of base registration for such fleet accords the same consideration for fleets with a base registration in Nebraska. Each apportionable vehicle of a fleet registered by a resident of Nebraska shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce.

(2) Mileage proportions for interjurisdiction fleets not operated in this state during the preceding year shall be determined by the division upon the application of the applicant on forms to be supplied by the division which shall show the operations of the preceding year in other jurisdictions and estimated operations in Nebraska or, if no operations were conducted the previous year, a full statement of the proposed method of operation.

(3) Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of three years following the current registration year. Upon request of the division, the owner shall make such records available to the division at its office for audit as to accuracy of computation and payments or pay the costs of an audit at the home office of the owner by a duly appointed representative of the division if the office where the records are maintained is not within the State of Nebraska. The division may enter into agreements with agencies of other

jurisdictions administering motor vehicle registration laws for joint audits of any such owner. All payments received to cover the costs of an audit shall be remitted by the division to the State Treasurer for credit to the Motor Carrier Division Cash Fund. No deficiency shall be assessed and no claim for credit shall be allowed for any license registration year for which records on which the application was made are no longer required to be maintained.

(4) If the division claims that a greater amount of fee is due under this section than was paid, the division shall notify the owner of the additional amount claimed to be due. The owner may accept such claim and pay the amount due, or he or she may dispute the claim and submit to the division any information which he or she may have in support of his or her position. If the dispute cannot otherwise be resolved within the division, the owner may petition for an appeal of the matter. The director shall appoint a hearing officer who shall hear the dispute and issue a written decision. Any appeal shall be in accordance with the Administrative Procedure Act. Upon expiration of the time for perfecting an appeal if no appeal is taken or upon final judicial determination if an appeal is taken, the division shall deny the owner the right to further registration for a fleet license until the amount finally determined to be due, together with any costs assessed against the owner, has been paid.

(5) Every applicant who licenses any apportionable vehicles under this section and section 60-3,203 shall have his or her registration certificates issued only after all fees under such sections are paid and, if applicable, proof has been furnished of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by 26 U.S.C. 4481 of the Internal Revenue Code as defined in section 49-801.01.

(6)(a) In the event of the transfer of ownership of any registered apportionable vehicle, (b) in the case of loss of possession because of fire, natural disaster, theft, or wrecking, junking, or dismantling of any registered apportionable vehicle, (c) when a salvage branded certificate of title is issued for any registered apportionable vehicle, (d) whenever a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) upon trade-in or surrender of a registered apportionable vehicle under a lease, or (f) in case of a change in the situs of a registered apportionable vehicle to a location outside of this state, its registration shall expire, except that if the registered owner or lessee applies to the division after such transfer or loss of possession and accompanies the application with a fee of one dollar and fifty cents, he or she may have any remaining credit of vehicle fees and taxes from the previously registered apportionable vehicle applied toward payment of any vehicle fees and taxes due and owing on another registered apportionable vehicle. If such registered apportionable vehicle has a greater gross vehicle weight than that of the previously registered apportionable vehicle, the registered owner or lessee of the registered apportionable vehicle shall additionally pay only the registration fee for the increased gross vehicle weight for the remaining months of the registration year based on the factors determined by the division in the original fleet application.

(7) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles (a) because of a transfer of ownership of the registered

apportionable vehicle, (b) because of loss of possession due to fire, natural disaster, theft, or wrecking, junking, or dismantling of the registered apportionable vehicle, (c) because a salvage branded certificate of title is issued for the registered apportionable vehicle, (d) because a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) because of a trade-in or surrender of the registered apportionable vehicle under a lease, or (f) because of a change in the situs of the registered apportionable vehicle to a location outside of this state, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, if such certificate or certificates or such other evidence of registration is unavailable, then by making an affidavit to the division of such transfer or loss, receive a refund of that portion of the unused registration fee based upon the number of unexpired months remaining in the registration year from the date of transfer or loss. No refund shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is transferred or lost within the same month as acquired, no refund shall be allowed for such month. Such refund may be in the form of a credit against any registration fees that have been incurred or are, at the time of the refund, being incurred by the registered apportionable vehicle owner. The Nebraska-based fleet owner shall make a claim for a refund under this subsection within the registration period or shall be deemed to have forfeited his or her right to the refund.

(8) In case of addition to the registered fleet during the registration year, the owner engaged in operating the fleet shall pay the proportionate registration fee from the date the vehicle was placed into service or, if the vehicle was previously registered, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first, for the remaining balance of the registration year. The fee for any permanent license plate issued for such addition pursuant to section 60-3,203 shall be the full fee required by such section, regardless of the number of months remaining in the license year.

(9) In lieu of registration under subsections (1) through (8) of this section, the title holder of record may apply to the division for special registration, to be known as an unladen-weight registration, for any commercial motor vehicle or combination of vehicles which have been registered to a Nebraska-based fleet owner within the current or previous registration year. Such registration shall be valid only for a period of thirty days and shall give no authority to operate the vehicle except when empty. The fee for such registration shall be twenty dollars for each vehicle, which fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. The issuance of such permits shall be governed by section 60-3,179.

(10) Any person may, in lieu of registration under subsections (1) through (8) of this section or for other jurisdictions as approved by the director, purchase a trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. A trip permit shall be issued before any person required to obtain a trip permit enters this state with such vehicle. The trip permit shall be issued by the director through Internet sales from the department's website. The trip permit shall be valid for a period of seventy-two hours. The fee for the trip permit shall be twenty-five dollars for each truck, truck-tractor, bus, or

truck or truck-tractor combination. The fee collected by the director shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 198; Laws 2008, LB756, § 15; Laws 2009, LB331, § 5; Laws 2012, LB751, § 15; Laws 2013, LB250, § 1; Laws 2016, LB666, § 2; Laws 2018, LB177, § 2; Laws 2019, LB79, § 9; Laws 2020, LB944, § 26; Laws 2021, LB113, § 10.  
Operative date April 1, 2021.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

The grant by the Director of Motor Vehicles of a proportional registration is a ministerial task which may be compelled by a writ of mandamus. *State ex rel. Hilt Truck Line v. Peterson*, 215 Neb. 81, 337 N.W.2d 133 (1983).

By merely filing application that included name and address of lessors in Nebraska, pursuant to this section, truck lessee did

not dual register truck for purpose of determining highway use excise tax liability under 26 U.S.C. section 4481(b). *Morgan Drive Away, Inc. v. United States*, 697 F.2d 1377 (Fed. Cir. 1983).

### **60-3,199 Reciprocity agreement or existing arrangement; validity.**

Nothing in sections 60-3,179 to 60-3,182 or 60-3,198 shall affect the validity or operation of any reciprocity agreement or arrangement presently existing and in effect between Nebraska and any other jurisdiction, and all such agreements or arrangements shall continue until specifically canceled by the director or replaced by a new agreement or arrangement in accordance with the provisions of such sections.

**Source:** Laws 2005, LB 274, § 199.

### **60-3,200 Apportionable vehicle; refund of fees; when.**

Whenever an apportionable vehicle is registered by the owner under section 60-362 and the motor vehicle tax and motor vehicle fee imposed in sections 60-3,185 and 60-3,190 have been paid on that apportionable vehicle for the registration period, and then the apportionable vehicle is registered under section 60-3,198, the Division of Motor Carrier Services, upon application of the owner of the apportionable vehicle on forms prescribed by the division, shall certify that the apportionable vehicle is registered under section 60-3,198 and that the owner is entitled to receive the refunds of the unused fees for the balance of the registration period as prescribed in sections 60-395 to 60-397.

**Source:** Laws 2005, LB 274, § 200.

### **60-3,201 Motor Carrier Division Cash Fund; created; use; investment.**

There is hereby created the Motor Carrier Division Cash Fund. Such fund shall be used by the Division of Motor Carrier Services of the department to carry out the operations of the division including the administration of titling and registering vehicles in interjurisdiction commerce and its duties pursuant to section 66-1415. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 274, § 201.

#### Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.



**60-3,201.01 Motor carrier services system; build and maintain; Motor Carrier Services System Replacement and Maintenance Fund; created; use; investment.**

(1) The Department of Motor Vehicles shall build and maintain a new motor carrier services system for processing the issuance of vehicle registrations pursuant to section 60-3,198 and the assessment of the motor fuel tax under the International Fuel Tax Agreement Act. The Director of Motor Vehicles shall designate an implementation date for the new system which date is on or before July 1, 2025.

(2) The Motor Carrier Services System Replacement and Maintenance Fund is created. The fund shall consist of amounts credited under section 60-3,202. The fund shall be used for the building, implementation, and maintenance of a new motor carrier services system for processing the issuance of vehicle registrations pursuant to section 60-3,198 and the assessment of the motor fuel tax under the International Fuel Tax Agreement Act.

(3) Any money in the Motor Carrier Services System Replacement and Maintenance 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 2021, LB113, § 12.

Operative date April 1, 2021.

**Cross References**

**International Fuel Tax Agreement Act**, see section 66-1401.

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**60-3,202 Registration fees; collection and distribution; procedure; Highway Tax Fund; created; use; investment.**

(1)(a) Until July 1, 2021, registration fees credited to the Motor Carrier Services Division Distributive Fund pursuant to section 60-3,198 and remaining in such fund at the close of each calendar month shall be remitted to the State Treasurer for credit as follows: (a) Three percent of thirty percent of such amount shall be credited to the Department of Revenue Property Assessment Division Cash Fund; (b) the remainder of such thirty percent shall be credited to the Highway Tax Fund; and (c) seventy percent of such amount shall be credited to the Highway Trust Fund.

(b) Beginning July 1, 2021, and until July 1, 2025, registration fees credited to the Motor Carrier Services Division Distributive Fund pursuant to section 60-3,198 and remaining in such fund at the close of each calendar month shall be remitted to the State Treasurer for credit as follows: (i) Twenty-seven percent of such amount shall be credited to the Highway Tax Fund; (ii) sixty-four percent of such amount shall be credited to the Highway Trust Fund; and (iii) nine percent of such amount shall be credited to the Motor Carrier Services System Replacement and Maintenance Fund.

(c) Beginning July 1, 2025, registration fees credited to the Motor Carrier Services Division Distributive Fund pursuant to section 60-3,198 and remaining in such fund at the close of each calendar month shall be remitted to the State Treasurer for credit as follows: (i) Twenty-eight percent of such amount shall be credited to the Highway Tax Fund; (ii) sixty-seven percent of such amount shall be credited to the Highway Trust Fund; and (iii) five percent of such amount

shall be credited to the Motor Carrier Services System Replacement and Maintenance Fund.

(2) On or before the last day of each quarter of the calendar year, the State Treasurer shall distribute all funds in the Highway Tax Fund to the county treasurer of each county in the same proportion as the number of original motor vehicle registrations in each county bears to the total of all original registrations within the state in the registration year immediately preceding.

(3) Upon receipt of motor vehicle tax funds from the State Treasurer pursuant to subsection (2) of this section, the county treasurer shall distribute such funds to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.

(4) In the event any taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds under subsection (3) of this section to which such taxing district would have been entitled shall be apportioned to the successor taxing district which has assumed the functions of the annexed, merged, dissolved, or absorbed taxing district.

(5) On or before March 1 of each year, the department shall furnish to the State Treasurer a tabulation showing the total number of original motor vehicle registrations in each county for the immediately preceding calendar year, which shall be the basis for computing the distribution of motor vehicle tax funds as provided in subsection (2) of this section.

(6) The Highway Tax Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 274, § 202; Laws 2007, LB334, § 11; Laws 2012, LB801, § 92; Laws 2016, LB977, § 12; Laws 2019, LB79, § 10; Laws 2021, LB113, § 11; Laws 2021, LB509, § 7.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 11, with LB509, section 7, to reflect all amendments.

**Note:** Changes made by LB113 became operative April 1, 2021. Changes made by LB509 became effective August 28, 2021.

#### Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

### **60-3,203 Permanent license plate; application; fee; renewal fee; replacement permanent plate; registration certificate replacement; deletion from fleet registration; fee.**

(1) Upon application and payment of the fees required pursuant to this section and section 60-3,198, the Division of Motor Carrier Services of the department shall issue to the owner of any fleet of apportionable commercial vehicles with a base registration in Nebraska a permanent license plate for each truck, truck-tractor, and trailer in the fleet. The application shall be accompanied by a fee of three dollars for each truck or truck-tractor and six dollars per trailer. The application shall be on a form developed by the division.

(2) Fleets of apportionable vehicles license plates shall display a distinctive license plate provided by the department pursuant to this section.

(3) Any license plate issued pursuant to this section shall remain affixed to the front of the truck or truck-tractor or to the rear of the trailer or semitrailer

as long as the apportionable vehicle is registered pursuant to section 60-3,198 by the owner making the original application pursuant to subsection (1) of this section. Upon transfer of ownership of the truck, truck-tractor, or trailer or transfer of ownership of the fleet or at any time the truck, truck-tractor, or trailer is no longer registered pursuant to section 60-3,198, the license plate shall cease to be active and shall be processed according to the rules and regulations of the department.

(4) The renewal fee for each permanent plate shall be two dollars and shall be assessed and collected in each license year after the year in which the permanent license plates are initially issued at the time all other renewal fees are collected pursuant to section 60-3,198 unless a truck, truck-tractor, or trailer has been deleted from the fleet registration.

(5)(a) If a permanent license plate is lost or destroyed, the owner shall submit an affidavit to that effect to the division prior to any deletion of the truck, truck-tractor, or trailer from the fleet registration. If the truck, truck-tractor, or trailer is not deleted from the fleet registration, a replacement permanent license plate may be issued upon payment of a fee of three dollars for each truck or truck-tractor and six dollars per trailer.

(b) If the registration certificate for any fleet vehicle is lost or stolen, the division shall collect a fee of one dollar for replacement of such certificate.

(6) If a truck, truck-tractor, or trailer for which a permanent license plate has been issued pursuant to this section is deleted from the fleet registration due to loss of possession by the registrant, the plate shall be returned to the division.

(7) The registrant shall be liable for the full amount of the registration fee due for any truck, truck-tractor, or trailer not deleted from the fleet registration renewal.

(8) All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 203; Laws 2020, LB944, § 27.

#### **60-3,204 Registration fee; calculation.**

The registration fee for apportionable vehicles shall be determined as follows:

(1) Divide the injurisdiction distance by the total fleet distance generated during the preceding year;

(2) Determine the total fees required under the laws of each jurisdiction for full registration of each apportionable vehicle at the regular annual or applicable fees or for the unexpired portion of the registration year; and

(3) Multiply the sum obtained under subdivision (2) of this section by the quotient obtained under subdivision (1) of this section.

**Source:** Laws 2005, LB 274, § 204.

#### **60-3,205 Registration certificate; disciplinary actions; director; powers; procedure.**

(1)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act:

(i) If the applicant or certificate holder has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license; or

(ii) If the applicant or certificate holder is in violation of sections 75-392 to 75-3,100.

(b) Prior to taking action under this section, the director shall notify and advise the applicant or certificate holder of the proposed action and the reasons for such action in writing, by regular United States mail, to his or her last-known business address as shown on the application for the certificate or renewal. The notice shall also include an advisement of the procedures in subdivision (c) of this subsection.

(c) The applicant or certificate holder may, within thirty days after the date of the mailing of the notice, petition the director for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the department. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or certificate holder may show cause why the proposed action should not be taken. The director shall give the applicant or certificate holder reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or certificate holder, the applicant or certificate holder may appeal the decision in accordance with the Administrative Procedure Act.

(d) Except as provided in subsections (2) and (3) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(e) Except as provided in subsections (2) and (3) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(f) If, in the judgment of the director, the applicant or certificate holder has complied with or is no longer in violation of the provisions for which the director took action under this subsection, the director may reinstate the registration certificate without delay.

(2)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act or a license under the International Fuel Tax Agreement Act if the applicant, licensee, or certificate holder has issued to the department a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order. The director may take such action no sooner than seven days after the written notice required in subdivision (1)(b) of this section has been provided. Any petition to contest such action filed pursuant to subdivision (1)(c) of this section shall not stay such action of the director.

(b) If the director takes an action pursuant to this subsection, the director shall reinstate the registration certificate or license without delay upon the payment of certified funds by the applicant, licensee, or certificate holder for any fees due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(c) The rules, regulations, and orders of the director and the department that pertain to hearings commenced in accordance with this section and that are in effect prior to March 17, 2006, shall remain in effect, unless changed or eliminated by the director or the department, except for those portions involving a stay upon the filing of a petition to contest any action taken pursuant to this subsection, in which case this subsection shall supersede those provisions.

(3) Any person who receives notice from the director of action taken pursuant to subsection (1) or (2) of this section shall, within three business days, return such registration certificate and license plates to the department as provided in this section. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

**Source:** Laws 2005, LB 274, § 205; Laws 2006, LB 853, § 5; Laws 2007, LB358, § 10; Laws 2009, LB331, § 6; Laws 2012, LB751, § 16; Laws 2020, LB944, § 28.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**International Fuel Tax Agreement Act**, see section 66-1401.

**60-3,206 International Registration Plan Act; violations; penalty.**

Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of the International Registration Plan Act is guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 274, § 206.

**60-3,207 Snowmobiles; terms, defined.**

For purposes of sections 60-3,207 to 60-3,219:

(1) Dealer means any person engaged in the business of selling snowmobiles at wholesale or retail;

(2) Manufacturer means a person, partnership, limited liability company, or corporation engaged in the business of manufacturing snowmobiles; and

(3) Operate means to ride in or on and control the operation of a snowmobile.

**Source:** Laws 2005, LB 274, § 207.

**60-3,208 Snowmobiles; registration required.**

Except as otherwise provided in sections 60-3,207 to 60-3,219, no person shall operate any snowmobile within the State of Nebraska unless such snowmobile has been registered in accordance with sections 60-3,209 to 60-3,213.

**Source:** Laws 2005, LB 274, § 208.

**60-3,209 Snowmobiles; registration; application.**

Application for registration shall be made to the county treasurer in such form as the director prescribes and shall state the name and address of the applicant, state a description of the snowmobile, including color, manufacturer, and identification number, and be signed by at least one owner. Application forms shall be made available through the county treasurer's office of each county in this state. Upon receipt of the application and the appropriate fee as provided in section 60-3,210, the snowmobile shall be registered by the county treasurer and a validation decal shall be provided which shall be affixed to the upper half of the snowmobile in such manner as the director prescribes. Snowmobiles owned by a dealer and operated for demonstration or testing purposes shall be exempt from affixing validation decals to the snowmobile but are required to carry a valid validation decal with the snowmobile at all times.

Application for registration shall be made within fifteen days after the date of purchase.

**Source:** Laws 2005, LB 274, § 209; Laws 2012, LB801, § 93.

**60-3,210 Snowmobiles; registration; fee.**

(1) The fee for registration of each snowmobile shall be:

(a) For each snowmobile owned by a person other than dealers or manufacturers, eight dollars per year and one dollar for a duplicate or transfer;

(b) For all snowmobiles owned by a dealer and operated for demonstration or testing purposes, twenty-five dollars per year; and

(c) For all snowmobiles owned by a manufacturer and operated for research, testing, experimentation, or demonstration purposes, one hundred dollars per year.

(2) Snowmobile dealer and manufacturer registrations shall not be transferable.

**Source:** Laws 2005, LB 274, § 210.

**60-3,211 Snowmobiles; certificate of registration and validation decal; expiration; renewal; procedure.**

(1) The certificate of registration and validation decal issued shall be valid for two years. The registration period for snowmobiles shall expire on the last day of September two years after the year of issuance, and renewal shall become delinquent on the first day of the following month.

(2) Such registration may be renewed every two years in the same manner as provided for the original registration.

(3) Every owner of a snowmobile shall renew his or her registration in the manner prescribed in section 60-3,209 upon payment of the registration fees provided in section 60-3,210.

**Source:** Laws 2005, LB 274, § 211.

**60-3,212 Snowmobiles; refund of fees; when.**

Upon transfer of ownership of any snowmobile or in case of loss of possession because of fire, natural disaster, theft, dismantlement, or junking, its registration shall expire, and the registered owner may, by returning the registration certificate and after making affidavit of such transfer or loss to the county official who issued the certificate, receive a refund of that part of the unused fees based on the number of unexpired months remaining in the registration period, except that when such snowmobile is transferred within the same calendar month in which acquired, no refund shall be allowed for such month.

**Source:** Laws 2005, LB 274, § 212; Laws 2020, LB944, § 29.

**60-3,213 Snowmobiles; state or political subdivision; fee waived.**

A registration number shall be issued without the payment of a fee for snowmobiles owned by the state or a political subdivision thereof upon application therefor.

**Source:** Laws 2005, LB 274, § 213.

**60-3,214 Snowmobiles; registration; exemptions.**

No registration shall be required for snowmobiles:

- (1) Owned and used by the United States, another state, or a political subdivision thereof;
- (2) Registered in a country other than the United States and temporarily used within this state;
- (3) Covered by a valid license of another state and which have not been within this state for more than thirty consecutive days; and
- (4) Which are operated only on land owned or leased by the owner thereof.

**Source:** Laws 2005, LB 274, § 214.

**60-3,215 Snowmobiles; licensing or registration by political subdivision prohibited.**

No political subdivision of this state shall require licensing or registration of snowmobiles covered by the provisions of sections 60-3,207 to 60-3,219.

**Source:** Laws 2005, LB 274, § 215.

**60-3,216 Snowmobiles; reciprocity; when.**

Snowmobiles properly registered in another state shall be allowed to operate in the State of Nebraska on a reciprocal basis.

**Source:** Laws 2005, LB 274, § 216.

**60-3,217 Snowmobiles; fees; disposition.**

(1) The county treasurers shall act as agents for the department in the collection of snowmobile registration fees. Twenty-five cents from the funds collected for each such registration shall be retained by the county.

(2) The remaining amount of the fees from registration of snowmobiles shall be remitted to the State Treasurer who shall credit twenty-five percent to the General Fund and seventy-five percent to the Nebraska Snowmobile Trail Cash Fund.

**Source:** Laws 2005, LB 274, § 217; Laws 2012, LB801, § 94.

**60-3,218 Nebraska Snowmobile Trail Cash Fund; created; use; investment; Game and Parks Commission; establish rules and regulations.**

(1) There is hereby created the Nebraska Snowmobile Trail Cash Fund into which shall be deposited the portion of the fees collected from snowmobile registration as provided in section 60-3,217.

(2) The Game and Parks Commission shall use the money in the Nebraska Snowmobile Trail Cash Fund for the operation, maintenance, enforcement, planning, establishment, and marking of snowmobile trails throughout the state and for the acquisition by purchase or lease of real property to carry out the provisions of this section.

(3) The commission shall establish rules and regulations pertaining to the use and maintenance of snowmobile trails.

(4) Transfers may be made from the Nebraska Snowmobile Trail Cash Fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Snowmobile Trail Cash Fund available for investment shall be

invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The State Treasurer shall transfer the unobligated June 30, 2017, balance in the Nebraska Snowmobile Trail Cash Fund to the General Fund on or before July 31, 2017, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2005, LB 274, § 218; Laws 2009, First Spec. Sess., LB3, § 35; Laws 2017, LB331, § 27.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**60-3,219 Snowmobiles; records.**

The department shall keep a record of each snowmobile registered, employing such methods and practices as may be necessary to maintain an accurate record.

**Source:** Laws 2005, LB 274, § 219.

**60-3,220 Registration, rules, regulations, and orders under prior law; effect.**

(1) The repeal of Chapter 60, article 3, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Registration Act is not intended to affect the validity of the registration of any motor vehicle, trailer, or snowmobile or the validity of any license plate, permit, renewal tab, or tonnage sticker issued under Chapter 60, article 3, and in existence on such date. All such license plates, permits, renewal tabs, and tonnage stickers are valid under the Motor Vehicle Registration Act as if registration had taken place under such act.

(2) The rules, regulations, and orders of the Director of Motor Vehicles and the Department of Motor Vehicles issued under Chapter 60, article 3, shall remain in effect as if issued under the Motor Vehicle Registration Act unless changed or eliminated by the director or the department to the extent such power is statutorily granted to the director and department.

**Source:** Laws 2005, LB 274, § 220.

**60-3,221 Towing of trailers; restrictions; section; how construed.**

(1) Except as otherwise provided in the Motor Vehicle Registration Act:

(a) A cabin trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck;

(iv) Local truck;

(v) Minitruck;

(vi) Recreational vehicle; or

(vii) Bus;

(b) A utility trailer shall only be towed by:

(i) A properly registered passenger car;



- (ii) A properly registered commercial motor vehicle or apportionable vehicle;
  - (iii) A properly registered farm truck;
  - (iv) A properly registered local truck;
  - (v) A properly registered minitruck;
  - (vi) A properly registered recreational vehicle;
  - (vii) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
  - (viii) A properly registered well-boring apparatus;
  - (ix) A dealer-plated vehicle;
  - (x) A personal-use dealer-plated vehicle;
  - (xi) A properly registered bus; or
  - (xii) A properly registered public power district motor vehicle or, beginning January 1, 2023, a properly registered metropolitan utilities district motor vehicle;
- (c) A farm trailer shall only be towed by a properly registered:
- (i) Passenger car;
  - (ii) Commercial motor vehicle;
  - (iii) Farm truck; or
  - (iv) Minitruck;
- (d) A commercial trailer shall only be towed by:
- (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
  - (ii) A properly registered local truck;
  - (iii) A properly registered well-boring apparatus;
  - (iv) A properly registered commercial motor vehicle or apportionable vehicle;
  - (v) A dealer-plated vehicle;
  - (vi) A personal-use dealer-plated vehicle;
  - (vii) A properly registered bus;
  - (viii) A properly registered farm truck; or
  - (ix) A properly registered public power district motor vehicle or, beginning January 1, 2023, a properly registered metropolitan utilities district motor vehicle;
- (e) A fertilizer trailer shall only be towed by a properly registered:
- (i) Passenger car;
  - (ii) Commercial motor vehicle or apportionable vehicle;
  - (iii) Farm truck; or
  - (iv) Local truck;
- (f) A pole and cable reel trailer shall only be towed by a properly registered:
- (i) Commercial motor vehicle or apportionable vehicle;
  - (ii) Local truck; or
  - (iii) Public power district motor vehicle or, beginning January 1, 2023, metropolitan utilities district motor vehicle;
- (g) A dealer-plated trailer shall only be towed by:

- (i) A dealer-plated vehicle;
  - (ii) A properly registered passenger car;
  - (iii) A properly registered commercial motor vehicle or apportionable vehicle;
  - (iv) A properly registered farm truck;
  - (v) A properly registered minitruck; or
  - (vi) A personal-use dealer-plated vehicle;
- (h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:
- (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
  - (ii) A properly registered local truck;
  - (iii) A properly registered well-boring apparatus;
  - (iv) A properly registered commercial motor vehicle or apportionable vehicle;
  - (v) A dealer-plated vehicle;
  - (vi) A personal-use dealer-plated vehicle;
  - (vii) A properly registered bus; or
  - (viii) A properly registered farm truck; and
- (i) A trailer registered as a historical vehicle pursuant to sections 60-3,130 to 60-3,134 shall only be towed by:
- (i) A motor vehicle properly registered as a historical vehicle pursuant to sections 60-3,130 to 60-3,134;
  - (ii) A properly registered passenger car;
  - (iii) A properly registered commercial motor vehicle or apportionable vehicle;
- or
- (iv) A properly registered local truck.

(2) Nothing in this section shall be construed to waive compliance with the Nebraska Rules of the Road or Chapter 75.

(3) Nothing in this section shall be construed to prohibit any motor vehicle or trailer from displaying dealer license plates or In Transit stickers authorized by section 60-376.

**Source:** Laws 2007, LB349, § 2; Laws 2011, LB212, § 4; Laws 2016, LB783, § 13; Laws 2018, LB909, § 70; Laws 2019, LB270, § 26.

Cross References

Nebraska Rules of the Road, see section 60-601.

**60-3,222 Payment of fee or tax; check, draft, or financial transaction returned or not honored; county treasurer; powers; notice; return of registration and license plates required; sheriff; powers.**

(1) If a fee required under the Motor Vehicle Registration Act or a tax required to be paid on any motor vehicle or trailer has been paid by check, draft, or other financial transaction, including an electronic financial transaction, and the check, draft, or financial transaction has been returned or not honored because of insufficient funds, no account, a stop-payment order, or any other reason, a county treasurer may cancel or refuse to issue or renew registration under the act.

(2) The county treasurer may take the action described in subsection (1) of this section no sooner than seven days after the notice required in subsection (3) of this section has been mailed.

(3) Prior to taking action described in subsection (1) of this section, the county treasurer shall notify the applicant or registrant of the proposed action and the reasons for such action in writing, by first-class, registered, or certified mail, mailed to the applicant's or registrant's last-known address as shown on the application for registration or renewal.

(4) If the county treasurer takes action pursuant to this section, the county treasurer shall reinstate the registration without delay upon the payment of certified funds by the applicant or registrant for any fees and taxes due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(5) Any person who is sent a notice from the county treasurer pursuant to subsection (1) of this section shall, within ten business days after mailing of the notice, return to the county treasurer the motor vehicle registration and license plates of the vehicle or trailer regarding which the action has been taken. If the person fails to return the registration and license plates to the county treasurer, the county treasurer shall notify the sheriff of the county in which the person resides that the person is in violation of this section. The sheriff may recover the registration and license plates and return them to the county treasurer.

**Source:** Laws 2009, LB129, § 2.

**60-3,223 Nebraska 150 Sesquicentennial Plates; design.**

(1) The department, in consultation with the Nebraska Sesquicentennial Commission and other interested persons, shall design license plates to be known as Nebraska 150 Sesquicentennial Plates to celebrate and commemorate the one-hundred-fiftieth year of statehood for Nebraska. The department shall ensure that the design reflects support for the sesquicentennial of the State of Nebraska.

(2) The design shall be selected on the basis of (a) enhancing the marketability of the plates to supporters of the sesquicentennial and (b) limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate when it is designed.

(3) One type of plate under this section shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to seven characters; and
- (b) Not use a county designation.

(4) One type of plate under this section shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118.

**Source:** Laws 2015, LB220, § 7.

**60-3,224 Nebraska 150 Sesquicentennial Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) Beginning October 1, 2015, and ending December 31, 2022, a person may apply to the department for Nebraska 150 Sesquicentennial Plates in lieu of

regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a plate under this section for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers.

(2) Each application for initial issuance or renewal of Nebraska 150 Sesquicentennial Plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this section shall be remitted to the State Treasurer. The State Treasurer shall credit fifteen percent of the fee for initial issuance and renewal of plates under subsection (3) of section 60-3,223 to the Department of Motor Vehicles Cash Fund and eighty-five percent of such fee to the Nebraska 150 Sesquicentennial Plate Proceeds Fund. The State Treasurer shall credit forty-three percent of the fee for initial issuance and renewal of plates under subsection (4) of section 60-3,223 to the Department of Motor Vehicles Cash Fund and fifty-seven percent of such fee to the Nebraska 150 Sesquicentennial Plate Proceeds Fund.

(3)(a) When the department receives an application for Nebraska 150 Sesquicentennial Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue plates under this section in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or trailer. If plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

(4) The owner of a motor vehicle or trailer bearing Nebraska 150 Sesquicentennial Plates may apply to the county treasurer to have such plates transferred to a motor vehicle or trailer other than the motor vehicle or trailer for which such plates were originally purchased if such motor vehicle or trailer is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other motor vehicle or trailer which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompa-

nied by a fee of three dollars. The State Treasurer shall credit fees collected pursuant to this subsection to the Department of Motor Vehicles Cash Fund.

(5) Nebraska 150 Sesquicentennial Plates shall not be issued or renewed beginning on January 1, 2023.

**Source:** Laws 2015, LB220, § 8; Laws 2017, LB263, § 56; Laws 2019, LB270, § 27; Laws 2021, LB113, § 13.  
Operative date August 28, 2021.

**60-3,225 Nebraska 150 Sesquicentennial Plate Proceeds Fund; created; investment; use.**

(1) The Nebraska 150 Sesquicentennial Plate Proceeds Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) If the cost of manufacturing Nebraska 150 Sesquicentennial Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska 150 Sesquicentennial Plate Proceeds Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of such plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska 150 Sesquicentennial Plate Proceeds Fund as provided in section 60-3,224.

(3) Until July 1, 2018, the Nebraska 150 Sesquicentennial Plate Proceeds Fund shall be used by the Nebraska Sesquicentennial Commission for purposes of carrying out section 81-8,310. Beginning on July 1, 2018, the State Treasurer shall transfer any money in the fund at the end of each calendar quarter to the Historical Society Fund.

**Source:** Laws 2015, LB220, § 9.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**60-3,226 Mountain Lion Conservation Plates; design.**

(1) The department shall design license plates to be known as Mountain Lion Conservation Plates. The department shall create designs reflecting support for the conservation of the mountain lion population. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate by October 1, 2016. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,227.

(2) One type of Mountain Lion Conservation Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Mountain Lion Conservation Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Mountain Lion Conservation Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2016, LB474, § 9; Laws 2019, LB356, § 15; Laws 2020, LB944, § 30.

**60-3,227 Mountain Lion Conservation Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Mountain Lion Conservation Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a Mountain Lion Conservation Plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Mountain Lion Conservation Plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Game and Parks Commission Educational Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Mountain Lion Conservation Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Game and Parks Commission Educational Fund.

(3)(a) When the department receives an application for Mountain Lion Conservation Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Mountain Lion Conservation Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Mountain Lion Conservation Plates are

lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(5) If the cost of manufacturing Mountain Lion Conservation Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Game and Parks Commission Educational Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Mountain Lion Conservation Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Game and Parks Commission Educational Fund.

**Source:** Laws 2016, LB474, § 10; Laws 2017, LB263, § 57; Laws 2019, LB270, § 28; Laws 2019, LB356, § 16; Laws 2021, LB113, § 14.  
Operative date August 28, 2021.

**60-3,228 Metropolitan utilities district license plates; public power district license plates; application; issuance.**

(1)(a) This subsection applies until January 1, 2023.

(b) Upon application and payment of the fees required pursuant to this section and section 60-3,229, each motor vehicle and trailer operated by a public power district shall be issued permanent public power district license plates. The public power district license plates shall be issued by the county in which the public power district is headquartered.

(c) Public power district vehicles shall display a distinctive license plate provided by the department pursuant to this section.

(d) Any license plate issued pursuant to this section shall remain affixed to the front and rear of the motor vehicle and to the rear of the trailer as long as the public power district vehicle is registered pursuant to this section by the owner or lessor making the original application pursuant to subdivision (1)(b) of this section.

(2)(a) This subsection applies beginning on January 1, 2023.

(b) Upon application and payment of the fees required pursuant to this section and section 60-3,229, each motor vehicle and trailer operated by a metropolitan utilities district or a public power district shall be issued permanent metropolitan utilities district or public power district license plates. The metropolitan utilities district or public power district license plates shall be issued by the county in which the metropolitan utilities district or public power district is headquartered.

(c) Metropolitan utilities district vehicles or public power district vehicles shall display a distinctive license plate provided by the department pursuant to this section.

(d) Any license plate issued pursuant to this section shall remain affixed to the front and rear of the motor vehicle and to the rear of the trailer as long as the metropolitan utilities district vehicle or public power district vehicle is registered pursuant to this section by the owner or lessor making the original application pursuant to subdivision (2)(b) of this section.

**Source:** Laws 2016, LB783, § 11; Laws 2018, LB909, § 71.

**60-3,229 Metropolitan utilities district license plates; public power district license plates; registration fee.**

(1) This subsection applies until January 1, 2023. The registration fee for a public power district motor vehicle shall be the fee provided for commercial motor vehicles in section 60-3,147. The registration fee for a public power district trailer shall be the fee provided for a trailer in section 60-3,151.

(2) This subsection applies beginning January 1, 2023. The registration fee for a metropolitan utilities district motor vehicle or public power district motor vehicle shall be the fee provided for commercial motor vehicles in section 60-3,147. The registration fee for a metropolitan utilities district trailer or public power district trailer shall be the fee provided for a trailer in section 60-3,151.

**Source:** Laws 2016, LB783, § 12; Laws 2017, LB263, § 58; Laws 2018, LB909, § 72.

**60-3,230 Breast Cancer Awareness Plates; design.**

(1) The department shall design license plates to be known as Breast Cancer Awareness Plates. The design shall include a pink ribbon and the words - early detection saves lives - along the bottom of the plate.

(2) The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate when it is designed.

(3) One type of plate under this section shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(4) One type of plate under this section shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.



(5) The department shall cease to issue Breast Cancer Awareness Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2016, LB977, § 9; Laws 2019, LB356, § 17; Laws 2020, LB944, § 31.

**60-3,231 Breast Cancer Awareness Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Breast Cancer Awareness Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a plate under this section for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Breast Cancer Awareness Plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the University of Nebraska Medical Center for the breast cancer navigator program.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Breast Cancer Awareness Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit seventy-five percent of the fee to the University of Nebraska Medical Center for the breast cancer navigator program and twenty-five percent of the fee to the Department of Motor Vehicles Cash Fund.

(3)(a) When the department receives an application for Breast Cancer Awareness Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue plates under this section in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or trailer. If Breast Cancer Awareness

Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

**Source:** Laws 2016, LB977, § 10; Laws 2017, LB263, § 59; Laws 2019, LB270, § 29; Laws 2019, LB356, § 18; Laws 2021, LB113, § 15.  
Operative date August 28, 2021.

#### **60-3,232 Choose Life License Plates; design.**

(1) The department shall design license plates to be known as Choose Life License Plates. The department shall create designs reflecting support for the protection of Nebraska's children. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate beginning January 1, 2018. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,233.

(2) One type of Choose Life License Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Choose Life License Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Choose Life License Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2017, LB46, § 7; Laws 2019, LB356, § 19; Laws 2020, LB944, § 32.

**60-3,233 Choose Life License Plates; application; form; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Choose Life License Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle or trailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Choose Life License Plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Choose Life License Plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program, 42 U.S.C. 601, et seq.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Choose Life License Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program.

(3)(a) When the department receives an application for Choose Life License Plates, the department shall deliver the plates to the county treasurer of the county in which the motor vehicle or trailer is registered. The county treasurer shall issue Choose Life License Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or trailer. If Choose Life License Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) This subdivision applies beginning on an implementation date designated by the director. The director shall designate an implementation date that is on or before January 1, 2021. The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(5) If the cost of manufacturing Choose Life License Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Choose Life License Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program.

**Source:** Laws 2017, LB46, § 8; Laws 2019, LB270, § 30; Laws 2019, LB356, § 20.

**60-3,234 Native American Cultural Awareness and History Plates; design requirements.**

(1) The department, in consultation with the Commission on Indian Affairs, shall design license plates to be known as Native American Cultural Awareness and History Plates. The design shall reflect the unique culture and history of Native American tribes historically and currently located in Nebraska. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,235.

(2) One type of Native American Cultural Awareness and History Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Native American Cultural Awareness and History Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Native American Cultural Awareness and History Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2017, LB263, § 60; Laws 2019, LB356, § 21; Laws 2020, LB944, § 33.

**60-3,235 Native American Cultural Awareness and History Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Native American Cultural Awareness and History Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle or trailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Native American Cultural Awareness and History Plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Native American Cultural Awareness and History Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Native American Scholarship and Leadership Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Native American Cultural Awareness and History Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Native American Scholarship and Leadership Fund.

(3)(a) When the department receives an application for Native American Cultural Awareness and History Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Native American Cultural Awareness and History Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or trailer. If Native American Cultural Awareness and History Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker

under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(5) If the cost of manufacturing Native American Cultural Awareness and History Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Native American Scholarship and Leadership Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Native American Cultural Awareness and History Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Native American Scholarship and Leadership Fund.

**Source:** Laws 2017, LB263, § 61; Laws 2019, LB270, § 31; Laws 2019, LB356, § 22; Laws 2021, LB113, § 16.  
Operative date August 28, 2021.

**60-3,236 Former military vehicle; plates; fee.**

For the registration of every former military vehicle, the fee shall be fifteen dollars. Former military vehicle license plates shall display, in addition to the registration number, the designation former military vehicle.

**Source:** Laws 2019, LB156, § 10.

**60-3,237 Wildlife Conservation Plates; design.**

(1) The department shall design license plates to be known as Wildlife Conservation Plates. The department shall create no more than three designs reflecting support for the conservation of Nebraska wildlife, including sandhill cranes, bighorn sheep, and ornate box turtles. Each design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate by January 1, 2021. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,238.

(2) One type of Wildlife Conservation Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Wildlife Conservation Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Wildlife Conservation Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2019, LB356, § 23; Laws 2020, LB944, § 34.

**60-3,238 Wildlife Conservation Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Wildlife Conservation Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a Wildlife Conservation Plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Wildlife Conservation Plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Wildlife Conservation Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Wildlife Conservation Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Wildlife Conservation Fund.

(3)(a) When the department receives an application for Wildlife Conservation Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department

shall issue Wildlife Conservation Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Wildlife Conservation Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

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

**Source:** Laws 2019, LB356, § 24; Laws 2020, LB944, § 35; Laws 2021, LB113, § 17.

Operative date August 28, 2021.

**60-3,239 Prostate Cancer Awareness Plates; design.**

(1) The department shall design license plates to be known as Prostate Cancer Awareness Plates. The design shall include a light blue ribbon and the words “early detection saves lives” along the bottom of the plate.

(2) The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate when it is designed.

(3) One type of plate under this section shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(4) One type of plate under this section shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for person-



alized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(5) The department shall cease to issue Prostate Cancer Awareness Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2019, LB356, § 25; Laws 2020, LB944, § 36.

**60-3,240 Prostate Cancer Awareness Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Prostate Cancer Awareness Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a plate under this section for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Prostate Cancer Awareness Plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the University of Nebraska Medical Center for the Nebraska Prostate Cancer Research Program.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Prostate Cancer Awareness Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit seventy-five percent of the fee to the University of Nebraska Medical Center for the Nebraska Prostate Cancer Research Program and twenty-five percent of the fee to the Department of Motor Vehicles Cash Fund.

(3)(a) When the department receives an application for Prostate Cancer Awareness Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue plates under this section in lieu

of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Prostate Cancer Awareness Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(5) If the cost of manufacturing Prostate Cancer Awareness Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the University of Nebraska Medical Center for the Nebraska Prostate Cancer Research Program shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Prostate Cancer Awareness Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the University of Nebraska Medical Center for the Nebraska Prostate Cancer Research Program.

**Source:** Laws 2019, LB356, § 26; Laws 2020, LB944, § 37; Laws 2021, LB113, § 18.

Operative date August 28, 2021.

**60-3,241 Sammy's Superheroes license plates; design.**

(1) The department shall design license plates to be known as Sammy's Superheroes license plates for childhood cancer awareness. The design shall include a blue handprint over a yellow ribbon and the words "childhood cancer awareness". The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate beginning January 1, 2021. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,242.

(2) One type of Sammy's Superheroes license plates for childhood cancer awareness shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Sammy's Superheroes license plates for childhood cancer awareness shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Sammy's Superheroes license plates for childhood cancer awareness beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2019, LB356, § 27; Laws 2020, LB944, § 38.

**60-3,242 Sammy's Superheroes license plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Sammy's Superheroes license plates for childhood cancer awareness in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a Sammy's Superheroes license plate for childhood cancer awareness for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Sammy's Superheroes license plates for childhood cancer awareness shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the University of Nebraska Medical Center for pediatric cancer research.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Sammy's Superheroes license plates for childhood cancer awareness shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the University of Nebraska Medical Center for pediatric cancer research.

(3)(a) When the department receives an application for Sammy's Superheroes license plates for childhood cancer awareness, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered, and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if

delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Sammy's Superheroes license plates for childhood cancer awareness in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Sammy's Superheroes license plates for childhood cancer awareness are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(5) If the cost of manufacturing Sammy's Superheroes license plates for childhood cancer awareness at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the University of Nebraska Medical Center for pediatric cancer research shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Sammy's Superheroes license plates for childhood cancer awareness and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the University of Nebraska Medical Center for pediatric cancer research.

**Source:** Laws 2019, LB356, § 28; Laws 2020, LB944, § 39; Laws 2021, LB113, § 19.

Operative date August 28, 2021.

#### **60-3,243 Support Our Troops Plates; design.**

(1) The department shall design license plates to be known as Support Our Troops Plates. The department shall create a design reflecting support for troops from all branches of the armed forces. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of

plate by January 1, 2021. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,244.

(2) One type of Support Our Troops Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Support Our Troops Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Support Our Troops Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2019, LB138, § 17; Laws 2020, LB944, § 40.

**60-3,244 Support Our Troops Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Support Our Troops Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a Support Our Troops Plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Support Our Troops Plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Veterans Employment Program Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Support Our Troops Plates shall be accompanied by a fee of seventy dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Veterans Employment Program Fund.

(3) When the department receives an application for Support Our Troops Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director

on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Support Our Troops Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Support Our Troops Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

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

(5) If the cost of manufacturing Support Our Troops Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Veterans Employment Program Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Support Our Troops Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Veterans Employment Program Fund.

**Source:** Laws 2019, LB138, § 18; Laws 2021, LB113, § 20.  
Operative date August 28, 2021.

**60-3,245 Donate Life Plates; design.**

(1) The department shall design license plates to be known as Donate Life Plates. The design shall support organ and tissue donation, registration as a donor on the Donor Registry of Nebraska, and the federally designated organ procurement organization for Nebraska. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate beginning January 1, 2021. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,246.

(2) One type of Donate Life Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Donate Life Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized

message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Donate Life Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2020, LB944, § 41.

**60-3,246 Donate Life Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Donate Life Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a Donate Life Plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Donate Life Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Organ and Tissue Donor Awareness and Education Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Donate Life Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Organ and Tissue Donor Awareness and Education Fund.

(3) When the department receives an application for Donate Life Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Donate Life Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Donate Life

Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(6) If the cost of manufacturing Donate Life Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Organ and Tissue Donor Awareness and Education Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Donate Life Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Organ and Tissue Donor Awareness and Education Fund.

**Source:** Laws 2020, LB944, § 42; Laws 2021, LB113, § 21.  
Operative date August 28, 2021.

**60-3,247 Down Syndrome Awareness Plates; design.**

(1) The department shall design license plates to be known as Down Syndrome Awareness Plates. The design shall include the words “Down syndrome awareness” inside a heart-shaped yellow and blue ribbon. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate beginning January 1, 2021. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,248.

(2) One type of Down Syndrome Awareness Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Down Syndrome Awareness Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.



(4) The department shall cease to issue Down Syndrome Awareness Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2020, LB944, § 43.

**60-3,248 Down Syndrome Awareness Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Down Syndrome Awareness Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a license plate under this section for a farm truck with a gross weight of over sixteen tons or a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the license plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Down Syndrome Awareness Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the University of Nebraska Medical Center for the Down Syndrome Clinic.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Down Syndrome Awareness Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the University of Nebraska Medical Center for the Down Syndrome Clinic.

(3) When the department receives an application for Down Syndrome Awareness Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Down Syndrome Awareness Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If

Down Syndrome Awareness Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(6) If the cost of manufacturing Down Syndrome Awareness Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the University of Nebraska Medical Center for the Down Syndrome Clinic shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Down Syndrome Awareness Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the University of Nebraska Medical Center for the Down Syndrome Clinic.

**Source:** Laws 2020, LB944, § 44; Laws 2021, LB113, § 22.  
Operative date August 28, 2021.

#### **60-3,249 Pets for Vets Plates; design.**

(1) The department shall design license plates to be known as Pets for Vets Plates. The design shall support veterans and companion or therapy pet animals. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate beginning January 1, 2021. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,250.

(2) One type of Pets for Vets Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Pets for Vets Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Pets for Vets Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2020, LB944, § 45.

**60-3,250 Pets for Vets Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Pets for Vets Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a Pets for Vets Plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Pets for Vets Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Pets for Vets Cash Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Pets for Vets Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Pets for Vets Cash Fund.

(3) When the department receives an application for Pets for Vets Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Pets for Vets Plates in lieu of regular license plates when the

applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Pets for Vets Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(6) If the cost of manufacturing Pets for Vets Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Pets for Vets Cash Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Pets for Vets Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Pets for Vets Cash Fund.

**Source:** Laws 2020, LB944, § 46; Laws 2021, LB113, § 23.  
Operative date August 28, 2021.

#### **60-3,251 Support the Arts Plates; design.**

(1) The department shall design license plates to be known as Support the Arts Plates. The design shall be selected in consultation with the Nebraska Arts Council and shall support the arts in Nebraska. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate beginning January 1, 2021. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,252.

(2) One type of Support the Arts Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Support the Arts Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for person-

alized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Support the Arts Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2020, LB944, § 47.

**60-3,252 Support the Arts Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for Support the Arts Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a Support the Arts Plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Support the Arts Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Support the Arts Cash Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Support the Arts Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Support the Arts Cash Fund.

(3) When the department receives an application for Support the Arts Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Support the Arts Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Support the

Arts Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(6) If the cost of manufacturing Support the Arts Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Support the Arts Cash Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Support the Arts Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Support the Arts Cash Fund.

**Source:** Laws 2020, LB944, § 48; Laws 2021, LB113, § 24.  
Operative date August 28, 2021.

### **60-3,253 The Good Life Is Outside Plates; design.**

(1) The department shall design license plates to be known as The Good Life Is Outside Plates. The design shall reflect the importance of safe walking and biking in Nebraska and the value of our recreational trails. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate beginning January 1, 2021. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,254.

(2) One type of The Good Life Is Outside Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of The Good Life Is Outside Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue The Good Life Is Outside Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2020, LB944, § 49.

**60-3,254 The Good Life Is Outside Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) A person may apply to the department for The Good Life Is Outside Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a The Good Life Is Outside Plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric The Good Life Is Outside Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Game and Parks State Park Improvement and Maintenance Fund for the purpose of trail improvement and maintenance.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message The Good Life Is Outside Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Game and Parks State Park Improvement and Maintenance Fund for the purpose of trail improvement and maintenance.

(3) When the department receives an application for The Good Life Is Outside Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2022, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue The Good Life Is Outside Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If The Good

Life Is Outside Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(6) If the cost of manufacturing The Good Life Is Outside Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Game and Parks State Park Improvement and Maintenance Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of The Good Life Is Outside Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Game and Parks State Park Improvement and Maintenance Fund for the purpose of trail improvement and maintenance.

**Source:** Laws 2020, LB944, § 50; Laws 2021, LB113, § 25.  
Operative date August 28, 2021.

#### **60-3,255 Nebraska History Plates; design.**

(1) The department shall design license plates to be known as Nebraska History Plates. The design shall be selected in consultation with the Nebraska State Historical Society and shall reflect the importance of historical preservation in Nebraska and the value of our shared Nebraska history. Each design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate by January 1, 2023. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,256.

(2) One type of Nebraska History Plates shall be alphanumeric plates. The department shall: (a) Assign a designation up to five characters; and (b) not use a county designation.

(3) One type of Nebraska History Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.



(4) The department shall cease to issue Nebraska History Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2021, LB317, § 7.

Effective date August 28, 2021.

**60-3,256 Nebraska History Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) Beginning January 1, 2023, a person may apply to the department for Nebraska History Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving Nebraska History Plates for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Nebraska History Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Support Nebraska History Cash Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Nebraska History Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Support Nebraska History Cash Fund.

(3)(a) When the department receives an application for Nebraska History Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2023, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Nebraska History Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Nebraska

History Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

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

**Source:** Laws 2021, LB317, § 8.

Effective date August 28, 2021.

**60-3,257 Josh the Otter-Be Safe Around Water Plates; design.**

(1) The department shall design license plates to be known as Josh the Otter-Be Safe Around Water Plates. The design shall include a blue background with the head of an otter surfacing above water surrounded by the words "Josh the Otter-Be Safe Around Water". The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate beginning January 1, 2022. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,258.

(2) One type of Josh the Otter-Be Safe Around Water Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Josh the Otter-Be Safe Around Water Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Josh the Otter-Be Safe Around Water Plates beginning with the next license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

**Source:** Laws 2021, LB166, § 7.  
Effective date August 28, 2021.

**60-3,258 Josh the Otter-Be Safe Around Water Plates; application; form; fee; delivery; fee; transfer; procedure; fee.**

(1) Beginning January 1, 2022, a person may apply to the department for Josh the Otter-Be Safe Around Water Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle, trailer, or semitrailer registered under section 60-3,198. An applicant receiving a Josh the Otter-Be Safe Around Water Plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Josh the Otter-Be Safe Around Water Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Josh the Otter-Be Safe Around Water Cash Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Josh the Otter-Be Safe Around Water Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Josh the Otter-Be Safe Around Water Cash Fund.

(3) When the department receives an application for Josh the Otter-Be Safe Around Water Plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. Beginning on an implementation date designated by the director on or before January 1, 2023, if delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Josh the Otter-Be Safe Around

Water Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle, trailer, or semitrailer. If Josh the Otter-Be Safe Around Water Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

(6) If the cost of manufacturing Josh the Otter-Be Safe Around Water Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Josh the Otter-Be Safe Around Water Cash Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Josh the Otter-Be Safe Around Water Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Josh the Otter-Be Safe Around Water Cash Fund.

**Source:** Laws 2021, LB166, § 8.  
Effective date August 28, 2021.

**ARTICLE 4**

**MOTOR VEHICLE OPERATORS' LICENSES**

**Cross References**

**License Suspension Act**, see section 43-3301.

(a) DEFINITIONS

Section	
60-401.	Repealed. Laws 1989, LB 285, § 145.
60-401.01.	Repealed. Laws 1990, LB 742, § 6.
60-402.	Transferred to section 60-462.

(b) OPERATORS' LICENSES

60-403.	Transferred to section 60-484.
60-403.01.	Transferred to section 60-4,127.
60-403.02.	Repealed. Laws 1977, LB 314, § 7.
60-403.03.	Transferred to section 60-485.

## MOTOR VEHICLE OPERATORS' LICENSES

Section	
60-403.04.	Transferred to section 60-4,128.
60-403.05.	Transferred to section 60-486.
60-403.06.	Repealed. Laws 1989, LB 285, § 145.
60-403.07.	Repealed. Laws 1989, LB 285, § 145.
60-403.08.	Repealed. Laws 1989, LB 285, § 145.
60-403.09.	Repealed. Laws 1989, LB 285, § 145.
60-403.10.	Repealed. Laws 1989, LB 285, § 145.
60-404.	Transferred to section 60-4,113.
60-405.	Transferred to section 60-4,116.
60-405.01.	Repealed. Laws 1984, LB 811, § 7.
60-406.	Transferred to section 60-4,117.
60-406.01.	Transferred to section 60-493.
60-406.02.	Repealed. Laws 1984, LB 711, § 3.
60-406.03.	Transferred to section 60-495.
60-406.04.	Transferred to section 60-4,119.
60-406.05.	Repealed. Laws 1984, LB 811, § 7.
60-406.06.	Transferred to section 60-482.
60-406.07.	Repealed. Laws 1984, LB 636, § 1.
60-406.08.	Transferred to section 60-481.
60-407.	Transferred to section 60-4,118.
60-407.01.	Repealed. Laws 1963, c. 359, § 8.
60-408.	Transferred to section 60-4,114.
60-409.	Transferred to section 60-4,115.
60-409.01.	Repealed. Laws 1981, LB 207, § 6.
60-409.02.	Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
60-409.03.	Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
60-409.04.	Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
60-409.05.	Transferred to section 60-4,125.
60-409.06.	Transferred to section 60-4,173.
60-409.07.	Transferred to section 60-4,174.
60-409.08.	Transferred to section 60-4,175.
60-409.09.	Transferred to section 60-4,176.
60-409.10.	Transferred to section 60-4,177.
60-409.11.	Transferred to section 60-4,178.
60-409.12.	Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
60-409.13.	Transferred to section 60-4,179.
60-410.	Transferred to section 60-488.
60-411.	Transferred to section 60-4,121.
60-411.01.	Transferred to section 60-4,122.
60-412.	Transferred to section 60-483.
60-412.01.	Transferred to section 60-494.
60-413.	Transferred to section 60-489.
60-414.	Transferred to section 60-492.
60-415.	Transferred to section 60-4,120.
60-416.	Transferred to section 60-487.
60-417.	Transferred to section 60-491.
60-418.	Transferred to section 60-4,107.
60-418.01.	Transferred to section 60-4,104.
60-419.	Transferred to section 60-4,101.
60-420.	Transferred to section 60-4,105.

### (c) PENAL PROVISIONS

60-421.	Transferred to section 60-497.
60-422.	Transferred to section 60-4,102.
60-423.	Transferred to section 60-4,103.
60-424.	Transferred to section 60-498.
60-425.	Transferred to section 60-499.
60-426.	Transferred to section 60-4,100.
60-427.	Transferred to section 60-496.
60-427.01.	Transferred to section 39-6,114.01.
60-428.	Repealed. Laws 1947, c. 148, § 5.

## MOTOR VEHICLES

Section	
60-429.	Transferred to section 60-4,106.
60-430.	Transferred to section 60-4,111.
60-430.01.	Transferred to section 60-4,108.
60-430.02.	Repealed. Laws 1967, c. 390, § 2.
60-430.03.	Repealed. Laws 1959, c. 293, § 7.
60-430.04.	Repealed. Laws 1986, LB 153, § 13.
60-430.05.	Transferred to section 60-4,109.
60-430.06.	Transferred to section 60-4,110.
60-430.07.	Repealed. Laws 1980, LB 696, § 6.

### (d) STATE PATROL

60-431.	Transferred to section 81-2001.
60-431.01.	Repealed. Laws 1981, LB 497, § 1.
60-432.	Transferred to section 81-2002.
60-433.	Transferred to section 81-2003.
60-434.	Transferred to section 81-2004.
60-434.01.	Transferred to section 81-2010.
60-435.	Transferred to section 81-2005.
60-436.	Transferred to section 81-2008.
60-437.	Transferred to section 81-2006.
60-438.	Transferred to section 81-2007.
60-439.	Transferred to section 81-2009.
60-440.	Transferred to section 60-406.08.
60-440.01.	Transferred to section 81-2011.
60-440.02.	Transferred to section 81-2012.
60-440.03.	Transferred to section 81-2013.
60-441.	Transferred to section 81-2014.
60-442.	Transferred to section 81-2015.
60-443.	Transferred to section 81-2016.
60-444.	Transferred to section 81-2017.
60-445.	Transferred to section 81-2018.
60-446.	Transferred to section 81-2019.
60-447.	Transferred to section 81-2020.
60-448.	Transferred to section 81-2021.
60-449.	Transferred to section 81-2022.
60-450.	Transferred to section 81-2023.
60-451.	Transferred to section 81-2024.
60-452.	Transferred to section 81-2025.
60-452.01.	Transferred to section 81-2026.
60-452.02.	Transferred to section 81-2027.
60-453.	Repealed. Laws 1953, c. 333, § 3.
60-454.	Repealed. Laws 1953, c. 333, § 3.
60-455.	Transferred to section 81-2028.
60-456.	Transferred to section 81-2029.
60-457.	Transferred to section 81-2030.
60-458.	Transferred to section 81-2031.
60-459.	Transferred to section 81-2032.
60-460.	Transferred to section 81-2033.
60-461.	Transferred to section 81-2034.

### (e) GENERAL PROVISIONS

60-462.	Act, how cited.
60-462.01.	Federal regulations; adopted.
60-462.02.	Legislative intent; director; department; powers and duties.
60-463.	Definitions, where found.
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60-463.02.	Autocycle, defined.
60-464.	Commercial driver's license, defined.
60-465.	Commercial motor vehicle, defined.
60-465.01.	Department, defined.
60-465.02.	Covered farm vehicle, defined.

## MOTOR VEHICLE OPERATORS' LICENSES

Section	
60-466.	Director, defined.
60-467.	Repealed. Laws 2003, LB 562, § 22.
60-468.	Drive, defined.
60-468.01.	Full legal name, defined.
60-469.	Gross vehicle weight rating (GVWR), defined.
60-469.01.	Gross combination weight rating, defined.
60-470.	Highway, defined.
60-470.01.	Impoundment of operator's license, defined.
60-470.02.	Interactive wireless communication device, defined.
60-471.	Motor vehicle, defined.
60-472.	Nonresident, defined.
60-473.	Operator or driver, defined.
60-474.	Operator's or driver's license, defined.
60-475.	Owner, defined.
60-475.01.	Principal residence, defined.
60-476.	Person, defined.
60-476.01.	Revocation of operator's license, defined.
60-476.02.	Suspension of operator's license, defined.
60-476.03.	Restricted commercial driver's license, defined.
60-477.	Repealed. Laws 2003, LB 562, § 22.
60-478.	Vehicle, defined.

### (f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479.	Sections; applicability.
60-479.01.	Fraudulent document recognition training; criminal history record information check; lawful status check; cost.
60-480.	Operators' licenses; classification.
60-480.01.	Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.
60-481.	Driving rules; publication; copy to licensee.
60-482.	Rules and regulations.
60-483.	Operator's license; numbering; records; abstracts of operating records; fees; information to United States Selective Service System; when; reciprocity agreement with foreign country.
60-483.01.	National Driver Register; employer check; fee.
60-484.	Operator's license required, when; state identification card; application.
60-484.01.	Digital system authorized.
60-484.02.	Digital images and signatures; use; confidentiality; prohibited acts; violation; penalty.
60-484.03.	Operators' licenses; state identification cards; department; retain copies of source documents.
60-484.04.	Operators' licenses; state identification cards; applicant present evidence of lawful status.
60-484.05.	Operators' licenses; state identification cards; temporary; when issued; period valid; special notation; renewal; return of license or card, when.
60-484.06.	Operators' licenses; state identification cards; department; power to verify documents.
60-485.	Repealed. Laws 2012, LB 751, § 57.
60-486.	Operator's license; license suspended or revoked; effect; appeal.
60-487.	Cancellation of certain licenses or permits; when.
60-488.	Nonresidents; license requirements; immunity.
60-489.	Operator's license; duty to carry and exhibit; exception; officers; power to demand presentation.
60-490.	Operators' licenses; state identification cards; expiration; renewal.
60-491.	Prohibited acts.
60-492.	Impersonating officer; penalty.
60-493.	Organ and tissue donation; county treasurer or licensing staff; distribute brochure; additional information; department; duty.
60-494.	Operator's license; state identification card; organ and tissue donation information; department; duty.

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- Section  
60-495. Organ and tissue donation; rules and regulations; director; duties; Organ and Tissue Donor Awareness and Education Fund; created; use; investment.  
60-496. Violation of law; revocation of operator's license; duties of director and Nebraska State Patrol.  
60-497. Conviction of offense authorizing revocation of operator's license; surrender of license; when required; duty of director to revoke.  
60-497.01. Conviction and probation records; abstract of court record; transmission to director; duties.  
60-497.02. Convictions; order of probation; abstract; transmittal required; open for inspection by public.  
60-497.03. Conviction reports; form of transmittal; revocation or suspension of license; director; duties.  
60-497.04. Noncompliance; penalty.  
60-498. Revocation; when mandatory.  
60-498.01. Driving under influence of alcohol; operator's license; confiscation and revocation; application for ignition interlock permit or 24/7 sobriety program permit; procedures; appeal; restrictions relating to ignition interlock permit or 24/7 sobriety program permit; prohibited acts relating to ignition interlock devices or 24/7 sobriety program permits; additional revocation period.  
60-498.02. Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; ignition interlock permit; restriction on operation of motor vehicle.  
60-498.03. Operator's license revocation decision; notice; contents.  
60-498.04. License revocation; appeal; notice of judgment.  
60-499. Revocation; when authorized.  
60-499.01. Revocation; reinstatement fee.  
60-4,100. Suspension; when authorized; citation; lack of financial ability to pay; hearing; determination; court or magistrate; powers; order; operate as release.  
60-4,100.01. Suspension; reinstatement fee.  
60-4,101. Repealed. Laws 1999, LB 704, § 53.  
60-4,102. Nonresident; driving privilege; revocation, suspension, or impoundment.  
60-4,103. Nonresident; violating terms of order; effect.  
60-4,104. Revocation or suspension; order of director; prima facie evidence.  
60-4,105. Appeal; procedure.  
60-4,106. Appeal; effect.  
60-4,107. Suspension or revocation; operation of vehicle prohibited; employment driving permit or medical hardship driving permit excepted.  
60-4,108. Operating motor vehicle during period of suspension, revocation, or impoundment; penalties; juvenile; violation; handled in juvenile court.  
60-4,109. Operating motor vehicle during period of suspension, revocation, or impoundment; city or village ordinance; penalties.  
60-4,110. Operating motor vehicle during period of suspension, revocation, or impoundment; impounding of motor vehicle; release, when authorized; restitution authorized.  
60-4,111. Violation; general penalty provisions.  
60-4,111.01. Storage or compilation of information; retailer; seller; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.
- (g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL
- 60-4,112. Sections; applicability.  
60-4,113. Examining personnel; appointment; duties; examinations; issuance of certificate or receipt; license; state identification card; county treasurer; duties; delivery of license or card.  
60-4,114. County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.



## MOTOR VEHICLE OPERATORS' LICENSES

- Section
- 60-4,114.01. Applicant for Class O or Class M license; issuance of LPD-learner's permit; restriction on reapplication for license.
  - 60-4,115. Fees; allocation; identity security surcharge.
  - 60-4,115.01. Fee payment returned or not honored; department powers; notice to applicant; contents; payment; department; duties.
  - 60-4,116. Applicant; department; duties.
  - 60-4,117. Operator's license or state identification card; form; department personnel or county treasurer; duties.
  - 60-4,118. Vision requirements; persons with physical impairments; physical or mental incompetence; prohibited act; penalty.
    - 60-4,118.01. Medical review of applicant or licensee; legislative intent.
    - 60-4,118.02. Repealed. Laws 2017, LB644, § 21.
    - 60-4,118.03. Mental, medical, or vision problems; records and reports; examinations; reports; appeal; immunity.
    - 60-4,118.04. Repealed. Laws 2017, LB644, § 21.
    - 60-4,118.05. Age requirements; license issued; when.
    - 60-4,118.06. Ignition interlock permit; issued; when; operation restriction; revocation of permit by director; when.
  - 60-4,119. Operators' licenses; state identification cards; digital image and digital signature; exception; procedure.
  - 60-4,120. Operator's license; state identification card; replacement.
    - 60-4,120.01. Provisional operator's permit; application; issuance; operation restrictions.
    - 60-4,120.02. Provisional operator's permit; violations; revocation; not eligible for ignition interlock permit.
  - 60-4,121. Military service; renewal of operator's license; period valid.
  - 60-4,122. Operator's license; state identification card; renewal procedure; law examination; exceptions; department; powers.
  - 60-4,123. LPD-learner's permit; application; issuance; operation restrictions.
    - 60-4,123.01. Fourteen-year-old person; operation permitted.
    - 60-4,124. School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty; not eligible for ignition interlock permit.
  - 60-4,125. LPD-learner's permit; LPE-learner's permit; violations; impoundment or revocation of permit; effect on eligibility for operator's license; not eligible for ignition interlock permit.
  - 60-4,126. Farm permit; issuance; violations; penalty; not eligible for ignition interlock permit.
  - 60-4,127. Motorcycle operation; Class M license required; issuance; examination.
  - 60-4,128. Motorcycle operation without Class M license; penalty.
  - 60-4,129. Employment driving permit; issuance; conditions; violations; penalty; revocation.
  - 60-4,130. Employment driving permit; application; contents; driver improvement course; violations; penalty; loss of eligibility; appeal.
    - 60-4,130.01. Medical hardship driving permit; issuance; conditions; violations; penalty; revocation.
    - 60-4,130.02. Medical hardship driving permit; application; contents; loss of eligibility; appeal.
    - 60-4,130.03. Operator less than twenty-one years of age; driver improvement course; suspension; reinstatement.
    - 60-4,130.04. Commercial driver safety course instructors; requirements; driver safety course; requirements.
    - 60-4,130.05. Driver safety courses; rules and regulations; fee.
- (h) PROVISIONS APPLICABLE TO OPERATION  
OF COMMERCIAL MOTOR VEHICLES
- 60-4,131. Sections; applicability; terms, defined.
    - 60-4,131.01. Individuals operating commercial motor vehicles for military purposes; applicability of sections.
  - 60-4,132. Purposes of sections.
  - 60-4,133. Person possessing commercial driver's license authorizing operation of Class A combination vehicle; rights.

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Section	
60-4,134.	Holder of Class A commercial driver's license; hazardous materials endorsement not required; conditions.
60-4,135.	Repealed. Laws 1993, LB 7, § 5.
60-4,136.	Repealed. Laws 1990, LB 980, § 37.
60-4,137.	Operation of commercial motor vehicle; valid commercial driver's license or valid CLP-commercial learner's permit required.
60-4,138.	Commercial drivers' licenses and restricted commercial drivers' licenses; classification.
60-4,139.	Commercial motor vehicle; nonresident; operating privilege.
60-4,139.01.	School bus endorsement; requirements.
60-4,140.	Multiple licenses; violation; penalty.
60-4,141.	Operation outside classification of license; restrictions; violation; penalty.
60-4,141.01.	Operation of commercial motor vehicle; restrictions; prohibited acts; violation; penalty.
60-4,142.	CLP-commercial learner's permit issuance; renewal.
60-4,143.	Commercial driver's license; CLP-commercial learner's permit; issuance; restriction; surrender of other licenses.
60-4,144.	Commercial driver's license; CLP-commercial learner's permit; applications; contents; application; demonstration of knowledge and skills; information and documentation required; verification.
60-4,144.01.	Commercial drivers' licenses; certification required; medical examiner's certificate.
60-4,144.02.	Commercial drivers' licenses; CLP-commercial learner's permit; medical examiner's certificate; department; duties; failure of driver to comply; department; duties.
60-4,144.03.	Temporary CLP-commercial learner's permit or commercial driver's license; issuance; renewal.
60-4,144.04.	CLP-commercial learner's permit; precondition to issuance of commercial driver's license.
60-4,145.	Repealed. Laws 2014, LB983, § 69.
60-4,146.	Application; requirements of federal law; certification.
60-4,146.01.	Restricted commercial driver's license; seasonal permit; application or examiner's certificate; operation permitted; term; violation; penalty.
60-4,147.	Repealed. Laws 1990, LB 980, § 37.
60-4,147.01.	Driver's record; disclosure of convictions; requirements.
60-4,147.02.	Hazardous materials endorsement; USA PATRIOT Act requirements.
60-4,147.03.	Hazardous materials endorsement; application process.
60-4,147.04.	Hazardous materials endorsement; security threat assessment; department; powers.
60-4,147.05.	Hazardous materials endorsement; expiration; when.
60-4,147.06.	Hazardous material endorsement; transfer from another state; procedure.
60-4,148.	Commercial drivers' licenses; issuance.
60-4,148.01.	Commercial drivers' licenses; CLP-commercial learners' permits; electronic renewal and replacement; department; duties; applicant; requirements; renewal; fee and surcharge; delivery.
60-4,149.	Commercial driver's license; CLP-commercial learner's permit; department personnel; examination; office space; issuance; delivery; electronic submission.
60-4,149.01.	Commercial drivers' licenses; law examination; exceptions; waiver.
60-4,149.02.	Commercial drivers' licenses; driving skills examination; exemption for driver with military commercial motor vehicle experience; conditions and limitations; applicant; certification.
60-4,150.	Commercial driver's license; CLP-commercial learner's permit; replacement; application; delivery.
60-4,151.	Commercial driver's license; RCDL-restricted commercial driver's license; SEP-seasonal permit; CLP-commercial learner's permit; form.
60-4,152.	Commercial driver's license issued to minor; form.
60-4,153.	Issuance of license; department; duties.
60-4,154.	Issuance of license or permit; director notify Commercial Driver License Information System; department; post information.

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- Section  
60-4,155. Department; duties; rules and regulations.  
60-4,156. Repealed. Laws 2014, LB983, § 69.  
60-4,157. Driving skills examination; waiver based on third-party tester; licensure in another state; report of examination results.  
60-4,158. Third-party testers; applicant; criminal history record check; fingerprints; rules and regulations; fees; violation; penalty.  
60-4,159. Licensee; permit holder; convictions; disqualifications; notification required; violation; penalty.  
60-4,160. Refusal or denial of application; notice; appeal.  
60-4,161. Employment as driver; application; contents; violation; penalty.  
60-4,162. Employment as driver; employer; duties; violation; penalty.  
60-4,163. Alcoholic liquor; prohibited operation; effect.  
60-4,164. Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.  
60-4,164.01. Alcoholic liquor; blood test; withdrawing requirements; damages; liability.  
60-4,165. Alcoholic liquor; rights of person tested.  
60-4,166. Alcoholic liquor; chemical test; unconscious person; effect on consent.  
60-4,167. Alcoholic liquor; officer's report; notice of disqualification; hearing before director; procedure.  
60-4,167.01. Alcoholic liquor; disqualification decision; director; duties.  
60-4,167.02. Alcoholic liquor; disqualification; appeal.  
60-4,168. Disqualification; when.  
60-4,168.01. Out-of-service order; violation; disqualification; when.  
60-4,168.02. Federal disqualification; effect.  
60-4,169. Revocation; when.  
60-4,170. Revocation; notice; failure to surrender license or permit; violation; penalty; appeal.  
60-4,171. Issuance of Class O or M operator's license; reinstatement of commercial driver's license or CLP-commercial learner's permit; when.  
60-4,172. Nonresident licensee or permit holder; conviction within state; director; duties.

### (i) COMMERCIAL DRIVER TRAINING SCHOOLS

- 60-4,173. Terms, defined.  
60-4,174. Director; duties; rules and regulations; Commissioner of Education; assist.  
60-4,175. School; license; requirements.  
60-4,176. Instructor; license; requirements.  
60-4,177. Licenses; renewal; expiration; fees.  
60-4,178. Licenses; cancel, suspend, or revoke; procedure; appeal.  
60-4,179. Violations; penalty.

### (j) STATE IDENTIFICATION CARDS

- 60-4,180. State identification card; issuance authorized; prior cards; invalid.  
60-4,181. State identification cards; issuance; requirements; form; delivery; cancellation.

### (k) POINT SYSTEM

- 60-4,182. Point system; offenses enumerated.  
60-4,183. Point system; revocation of license, when; driver's education and training course; employment driving permit or medical hardship driving permit, exception.  
60-4,184. Revocation of license; notice; failure to return license; procedure; penalty; appeal; effect.  
60-4,185. License; revocation; when points disregarded.  
60-4,186. Operation after revocation; violation; penalty; employment driving permit or medical hardship driving permit excepted; proof of financial responsibility.  
60-4,187. Pardon by mayor or chairperson of board of trustees; effect.  
60-4,188. Driver's education and training course; reduce point assessment.

§ 60-401

**MOTOR VEHICLES**

Section

(l) VETERAN NOTATION

60-4,189. Operator's license; state identification card; veteran designation;  
Department of Motor Vehicles; duties; replacement license or card.

(a) DEFINITIONS

**60-401 Repealed. Laws 1989, LB 285, § 145.**

**60-401.01 Repealed. Laws 1990, LB 742, § 6.**

**60-402 Transferred to section 60-462.**

(b) OPERATORS' LICENSES

**60-403 Transferred to section 60-484.**

**60-403.01 Transferred to section 60-4,127.**

**60-403.02 Repealed. Laws 1977, LB 314, § 7.**

**60-403.03 Transferred to section 60-485.**

**60-403.04 Transferred to section 60-4,128.**

**60-403.05 Transferred to section 60-486.**

**60-403.06 Repealed. Laws 1989, LB 285, § 145.**

**60-403.07 Repealed. Laws 1989, LB 285, § 145.**

**60-403.08 Repealed. Laws 1989, LB 285, § 145.**

**60-403.09 Repealed. Laws 1989, LB 285, § 145.**

**60-403.10 Repealed. Laws 1989, LB 285, § 145.**

**60-404 Transferred to section 60-4,113.**

**60-405 Transferred to section 60-4,116.**

**60-405.01 Repealed. Laws 1984, LB 811, § 7.**

**60-406 Transferred to section 60-4,117.**

**60-406.01 Transferred to section 60-493.**

**60-406.02 Repealed. Laws 1984, LB 711, § 3.**

**60-406.03 Transferred to section 60-495.**

**60-406.04 Transferred to section 60-4,119.**

**60-406.05 Repealed. Laws 1984, LB 811, § 7.**

**60-406.06 Transferred to section 60-482.**

**60-406.07 Repealed. Laws 1984, LB 636, § 1.**

**60-406.08 Transferred to section 60-481.**

- 60-407 Transferred to section 60-4,118.
- 60-407.01 Repealed. Laws 1963, c. 359, § 8.
- 60-408 Transferred to section 60-4,114.
- 60-409 Transferred to section 60-4,115.
- 60-409.01 Repealed. Laws 1981, LB 207, § 6.
- 60-409.02 Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.03 Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.04 Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.05 Transferred to section 60-4,125.
- 60-409.06 Transferred to section 60-4,173.
- 60-409.07 Transferred to section 60-4,174.
- 60-409.08 Transferred to section 60-4,175.
- 60-409.09 Transferred to section 60-4,176.
- 60-409.10 Transferred to section 60-4,177.
- 60-409.11 Transferred to section 60-4,178.
- 60-409.12 Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.13 Transferred to section 60-4,179.
- 60-410 Transferred to section 60-488.
- 60-411 Transferred to section 60-4,121.
- 60-411.01 Transferred to section 60-4,122.
- 60-412 Transferred to section 60-483.
- 60-412.01 Transferred to section 60-494.
- 60-413 Transferred to section 60-489.
- 60-414 Transferred to section 60-492.
- 60-415 Transferred to section 60-4,120.
- 60-416 Transferred to section 60-487.
- 60-417 Transferred to section 60-491.
- 60-418 Transferred to section 60-4,107.
- 60-418.01 Transferred to section 60-4,104.
- 60-419 Transferred to section 60-4,101.
- 60-420 Transferred to section 60-4,105.

(c) PENAL PROVISIONS

- 60-421 Transferred to section 60-497.
- 60-422 Transferred to section 60-4,102.
- 60-423 Transferred to section 60-4,103.
- 60-424 Transferred to section 60-498.
- 60-425 Transferred to section 60-499.
- 60-426 Transferred to section 60-4,100.
- 60-427 Transferred to section 60-496.
- 60-427.01 Transferred to section 39-6,114.01.
- 60-428 Repealed. Laws 1947, c. 148, § 5.
- 60-429 Transferred to section 60-4,106.
- 60-430 Transferred to section 60-4,111.
- 60-430.01 Transferred to section 60-4,108.
- 60-430.02 Repealed. Laws 1967, c. 390, § 2.
- 60-430.03 Repealed. Laws 1959, c. 293, § 7.
- 60-430.04 Repealed. Laws 1986, LB 153, § 13.
- 60-430.05 Transferred to section 60-4,109.
- 60-430.06 Transferred to section 60-4,110.
- 60-430.07 Repealed. Laws 1980, LB 696, § 6.

(d) STATE PATROL

- 60-431 Transferred to section 81-2001.
- 60-431.01 Repealed. Laws 1981, LB 497, § 1.
- 60-432 Transferred to section 81-2002.
- 60-433 Transferred to section 81-2003.
- 60-434 Transferred to section 81-2004.
- 60-434.01 Transferred to section 81-2010.
- 60-435 Transferred to section 81-2005.
- 60-436 Transferred to section 81-2008.
- 60-437 Transferred to section 81-2006.
- 60-438 Transferred to section 81-2007.
- 60-439 Transferred to section 81-2009.

- 60-440 Transferred to section 60-406.08.
- 60-440.01 Transferred to section 81-2011.
- 60-440.02 Transferred to section 81-2012.
- 60-440.03 Transferred to section 81-2013.
- 60-441 Transferred to section 81-2014.
- 60-442 Transferred to section 81-2015.
- 60-443 Transferred to section 81-2016.
- 60-444 Transferred to section 81-2017.
- 60-445 Transferred to section 81-2018.
- 60-446 Transferred to section 81-2019.
- 60-447 Transferred to section 81-2020.
- 60-448 Transferred to section 81-2021.
- 60-449 Transferred to section 81-2022.
- 60-450 Transferred to section 81-2023.
- 60-451 Transferred to section 81-2024.
- 60-452 Transferred to section 81-2025.
- 60-452.01 Transferred to section 81-2026.
- 60-452.02 Transferred to section 81-2027.
- 60-453 Repealed. Laws 1953, c. 333, § 3.
- 60-454 Repealed. Laws 1953, c. 333, § 3.
- 60-455 Transferred to section 81-2028.
- 60-456 Transferred to section 81-2029.
- 60-457 Transferred to section 81-2030.
- 60-458 Transferred to section 81-2031.
- 60-459 Transferred to section 81-2032.
- 60-460 Transferred to section 81-2033.
- 60-461 Transferred to section 81-2034.

(e) GENERAL PROVISIONS

**60-462 Act, how cited.**

Sections 60-462 to 60-4,189 shall be known and may be cited as the Motor Vehicle Operator's License Act.

**Source:** Laws 1937, c. 141, § 31, p. 523; C.S.Supp.,1941, § 60-434; R.S.1943, § 60-402; R.S.1943, (1988), § 60-402; Laws 1989, LB

284, § 2; Laws 1989, LB 285, § 12; Laws 1990, LB 980, § 6; Laws 1991, LB 44, § 1; Laws 1993, LB 105, § 4; Laws 1993, LB 370, § 65; Laws 1993, LB 420, § 1; Laws 1994, LB 211, § 1; Laws 1995, LB 467, § 6; Laws 1996, LB 323, § 1; Laws 1997, LB 210, § 2; Laws 1997, LB 256, § 4; Laws 1998, LB 320, § 1; Laws 2001, LB 38, § 5; Laws 2001, LB 574, § 1; Laws 2003, LB 209, § 1; Laws 2003, LB 562, § 2; Laws 2005, LB 76, § 2; Laws 2006, LB 853, § 6; Laws 2007, LB415, § 1; Laws 2008, LB911, § 1; Laws 2011, LB158, § 1; Laws 2011, LB178, § 2; Laws 2011, LB215, § 1; Laws 2013, LB93, § 1; Laws 2014, LB983, § 2; Laws 2015, LB231, § 19; Laws 2016, LB311, § 1; Laws 2016, LB977, § 13; Laws 2018, LB629, § 1; Laws 2018, LB909, § 73.

#### **60-462.01 Federal regulations; adopted.**

For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, 2021:

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

**Source:** Laws 2003, LB 562, § 20; Laws 2004, LB 560, § 36; Laws 2005, LB 76, § 3; Laws 2006, LB 853, § 7; Laws 2006, LB 1007, § 4; Laws 2007, LB239, § 4; Laws 2008, LB756, § 16; Laws 2009, LB331, § 7; Laws 2010, LB805, § 3; Laws 2011, LB178, § 3; Laws 2011, LB212, § 5; Laws 2012, LB751, § 17; Laws 2013, LB35, § 3; Laws 2014, LB776, § 4; Laws 2014, LB983, § 3; Laws 2015, LB313, § 4; Laws 2016, LB929, § 6; Laws 2017, LB263, § 62; Laws 2018, LB909, § 74; Laws 2019, LB79, § 11; Laws 2020, LB944, § 51; Laws 2021, LB149, § 9.  
Effective date August 28, 2021.

#### **60-462.02 Legislative intent; director; department; powers and duties.**

It is the intent of the Legislature that the department develop, implement, and maintain processes for the issuance of operators' licenses and state identification cards designed to protect the identity of applicants for and holders of such licenses and cards and reduce identity theft, fraud, forgery, and counterfeiting to the maximum extent possible with respect to such licenses and cards. The department shall adopt security and technology practices to enhance the enrollment, production, data storage, and credentialing system of such licenses and cards in order to maximize the integrity of the process.

**Source:** Laws 2008, LB911, § 2; Laws 2009, LB331, § 8; Laws 2011, LB215, § 2.

#### **60-463 Definitions, where found.**

For purposes of the Motor Vehicle Operator's License Act, the definitions found in sections 60-463.01 to 60-478 shall be used.

**Source:** Laws 1989, LB 285, § 13; Laws 1993, LB 370, § 66; Laws 1993, LB 420, § 2; Laws 2001, LB 38, § 6; Laws 2007, LB415, § 2; Laws 2008, LB911, § 3; Laws 2014, LB983, § 4; Laws 2015, LB231, § 20; Laws 2016, LB311, § 2.



**60-463.01 Cancellation of operator's license, defined.**

Cancellation of operator's license shall mean the annulment or termination by formal action of the Department of Motor Vehicles of a person's license because of some error or defect in such license or because the licensee is no longer entitled to such license, and without prejudice to application for a new license which may be made at any time after such cancellation.

**Source:** Laws 1993, LB 370, § 67.

**60-463.02 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) having antilock brakes, (4) designed to be controlled with a steering wheel and pedals, and (5) in which the operator and passenger ride either side by side or in tandem in a seating area that is equipped with a manufacturer-installed three-point safety belt system for each occupant and that has a seating area that either (a) is completely enclosed and is equipped with manufacturer-installed airbags and a manufacturer-installed roll cage or (b) is not completely enclosed and is equipped with a manufacturer-installed rollover protection system.

**Source:** Laws 2015, LB231, § 21; Laws 2018, LB909, § 75.

**60-464 Commercial driver's license, defined.**

Commercial driver's license means an operator's license issued in accordance with the requirements of the Motor Vehicle Operator's License Act to an individual which authorizes such individual to operate a class of commercial motor vehicle.

**Source:** Laws 1989, LB 285, § 14; Laws 2014, LB983, § 5.

**60-465 Commercial motor vehicle, defined.**

(1) Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating or gross combination weight of eleven thousand seven hundred ninety-four kilograms or more (twenty-six thousand one pounds or more) inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than four thousand five hundred thirty-six kilograms (ten thousand pounds);

(b) Has a gross vehicle weight rating or gross vehicle weight of eleven thousand seven hundred ninety-four or more kilograms (twenty-six thousand one pounds or more);

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under 49 C.F.R. part 172, subpart F.

(2) Commercial motor vehicle does not include:

(a) A covered farm vehicle;

(b) Any recreational vehicle as defined in section 60-347 or motor vehicle towing a cabin trailer as defined in sections 60-314 and 60-339;

(c) Any emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions which is equipped with audible and visual signals and operated by a public or volunteer fire department; or

(d) Any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by persons identified in section 60-4,131.01.

**Source:** Laws 1989, LB 285, § 15; Laws 2005, LB 76, § 4; Laws 2005, LB 274, § 235; Laws 2006, LB 853, § 8; Laws 2006, LB 1007, § 5; Laws 2010, LB805, § 4; Laws 2014, LB983, § 6.

Under the definition in the Motor Vehicle Operator's License Act, a power unit and hay grinder constitute a commercial motor vehicle. State v. Neisius, 293 Neb. 503, 881 N.W.2d 572 (2016).

**60-465.01 Department, defined.**

Department means the Department of Motor Vehicles.

**Source:** Laws 2008, LB911, § 4.

**60-465.02 Covered farm vehicle, defined.**

(1) Covered farm vehicle means a motor vehicle, including an articulated motor vehicle:

(a) That:

(i) Is traveling in the state in which the vehicle is registered or another state;

(ii) Is operated by:

(A) A farm owner or operator;

(B) A ranch owner or operator; or

(C) An employee or family member of an individual specified in subdivision (1)(a)(ii)(A) or (1)(a)(ii)(B) of this section;

(iii) Is transporting to or from a farm or ranch:

(A) Agricultural commodities;

(B) Livestock; or

(C) Machinery or supplies;

(iv) Except as provided in subsection (2) of this section, is not used in the operations of a for-hire motor carrier; and

(v) Is equipped with a special license plate or other designation by the state in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel; and

(b) That has a gross vehicle weight rating or gross vehicle weight, whichever is greater, that is:

(i) Less than twenty-six thousand one pounds; or

(ii) Twenty-six thousand one pounds or more and is traveling within the state or within one hundred fifty air miles of the farm or ranch with respect to which the vehicle is being operated.

(2) Covered farm vehicle includes a motor vehicle that meets the requirements of subsection (1) of this section, except for subdivision (1)(a)(iv) of this section, and:

- (a) Is operated pursuant to a crop share farm lease agreement;
- (b) Is owned by a tenant with respect to that agreement; and
- (c) Is transporting the landlord's portion of the crops under that agreement.

(3) Covered farm vehicle does not include:

(a) A combination of truck-tractor and semitrailer which is operated by a person under eighteen years of age; or

(b) A combination of truck-tractor and semitrailer which is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the combination to be placarded under 49 C.F.R. part 172, subpart F.

**Source:** Laws 2014, LB983, § 7.

**60-466 Director, defined.**

Director shall mean the Director of Motor Vehicles.

**Source:** Laws 1989, LB 285, § 16.

**60-467 Repealed. Laws 2003, LB 562, § 22.**

**60-468 Drive, defined.**

Drive shall mean to operate or be in the actual physical control of a motor vehicle.

**Source:** Laws 1989, LB 285, § 18.

**60-468.01 Full legal name, defined.**

Full legal name means an individual's first name, middle name, and last or surname without use of initials or nicknames.

**Source:** Laws 2008, LB911, § 5.

**60-469 Gross vehicle weight rating (GVWR), defined.**

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

**Source:** Laws 1989, LB 285, § 19; Laws 2016, LB311, § 4.

**60-469.01 Gross combination weight rating, defined.**

Gross combination weight rating means the greater of (1) a value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard certification label required by the National Highway Traffic Safety Administration, or (2) the sum of the gross vehicle weight ratings or the gross vehicle weights of the power unit and the towed unit or units, or any combination thereof, that produces the highest value. Gross combination weight rating does not apply to a commercial motor vehicle if the power unit is not towing another vehicle.

**Source:** Laws 2016, LB311, § 3.

**60-470 Highway, defined.**

Highway shall mean the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of motor vehicle travel.

**Source:** Laws 1989, LB 285, § 20.

**60-470.01 Impoundment of operator's license, defined.**

Impoundment of operator's license shall mean the seizure and holding of a person's operator's license by the court pursuant to a court order requiring such person not to operate a motor vehicle for a specified period of time when the court has not ordered a revocation of the operator's license.

**Source:** Laws 2001, LB 38, § 7.

**60-470.02 Interactive wireless communication device, defined.**

Interactive wireless communication device means any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages, or a laptop computer.

**Source:** Laws 2007, LB415, § 3.

**60-471 Motor vehicle, defined.**

Motor vehicle means all vehicles propelled by any power other than muscular power. Motor vehicle does not include (1) bicycles as defined in section 60-611, (2) self-propelled chairs used by persons who are disabled, (3) farm tractors, (4) farm tractors used occasionally outside general farm usage, (5) road rollers, (6) vehicles which run only on rails or tracks, (7) electric personal assistive mobility devices as defined in section 60-618.02, and (8) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, go-carts, riding lawn mowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663.

**Source:** Laws 1989, LB 285, § 21; Laws 1993, LB 370, § 68; Laws 2002, LB 1105, § 445; Laws 2010, LB650, § 30; Laws 2011, LB289, § 25; Laws 2012, LB1155, § 12; Laws 2015, LB95, § 7.

Under the definition in the Motor Vehicle Operator's License Act, a power unit and hay grinder constitute a motor vehicle. State v. Neisius, 293 Neb. 503, 881 N.W.2d 572 (2016).

**60-472 Nonresident, defined.**

Nonresident shall mean every person who is not a resident of this state.

**Source:** Laws 1989, LB 285, § 22.

**60-473 Operator or driver, defined.**

Operator or driver shall mean any person who drives a motor vehicle.

**Source:** Laws 1989, LB 285, § 23.

**60-474 Operator's or driver's license, defined.**

Operator's or driver's license shall mean any license or permit to operate a motor vehicle issued under the laws of this state, including:

- (1) Any replacement license or instruction permit;
- (2) The privilege of any person to drive a motor vehicle whether such person holds a valid license;
- (3) Any nonresident's operating privilege which shall mean the privilege conferred upon a nonresident by the laws of this state pertaining to the operation of a motor vehicle in this state by such person or the use in this state of a vehicle owned by such person;
- (4) An employment driving permit issued as provided by sections 60-4,129 and 60-4,130; and
- (5) A medical hardship driving permit issued as provided by sections 60-4,130.01 and 60-4,130.02.

**Source:** Laws 1989, LB 285, § 24; Laws 1993, LB 105, § 5; Laws 1993, LB 370, § 69; Laws 2014, LB777, § 2.

**60-475 Owner, defined.**

Owner shall mean a person who holds legal title to a motor vehicle, a mortgagor entitled to the possession of a motor vehicle, or the conditional vendee or lessee of a motor vehicle which is the subject of an agreement for the conditional sale or lease of the motor vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee.

**Source:** Laws 1989, LB 285, § 25.

**60-475.01 Principal residence, defined.**

Principal residence means the location in Nebraska where a person resides at the time of application even if such residence is temporary.

**Source:** Laws 2008, LB911, § 6.

**60-476 Person, defined.**

Person shall mean every natural person, firm, partnership, limited liability company, association, or corporation.

**Source:** Laws 1989, LB 285, § 26; Laws 1993, LB 121, § 383.

**60-476.01 Revocation of operator's license, defined.**

Revocation of operator's license shall mean the termination by a court of competent jurisdiction or by formal action of the Department of Motor Vehicles of a person's operator's license, which termination shall not be subject to renewal or restoration. Application for reinstatement of eligibility for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in the statute providing for revocation.

**Source:** Laws 1993, LB 370, § 70; Laws 2001, LB 38, § 8.

For purposes of the Motor Vehicle Operator's License Act, a motorist's ineligibility to hold a driver's license in another state constitutes a revocation as it is defined by this section. Wilczewski v. Neth, 273 Neb. 324, 729 N.W.2d 678 (2007).

**60-476.02 Suspension of operator's license, defined.**

Suspension of operator's license shall mean the temporary withdrawal by formal action of the Department of Motor Vehicles of a person's operator's license for a period specifically designated by the department, if any, and until compliance with all conditions for reinstatement.

**Source:** Laws 1993, LB 370, § 71; Laws 2001, LB 38, § 9.

**60-476.03 Restricted commercial driver's license, defined.**

Restricted commercial driver's license shall mean a class of commercial driver's license issued in accordance with the requirements of the Motor Vehicle Operator's License Act.

**Source:** Laws 1993, LB 420, § 3.

**60-477 Repealed. Laws 2003, LB 562, § 22.****60-478 Vehicle, defined.**

Vehicle shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway except devices moved solely by human power or used exclusively upon stationary rails or tracks.

**Source:** Laws 1989, LB 285, § 28.

**(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES****60-479 Sections; applicability.**

Sections 60-479.01 to 60-4,111.01, 60-4,113, 60-4,114, 60-4,115 to 60-4,118, and 60-4,182 to 60-4,189 shall apply to any operator's license subject to the Motor Vehicle Operator's License Act.

**Source:** Laws 1989, LB 285, § 29; Laws 1993, LB 370, § 72; Laws 1995, LB 467, § 7; Laws 1997, LB 210, § 3; Laws 1997, LB 256, § 5; Laws 2001, LB 38, § 10; Laws 2001, LB 574, § 2; Laws 2003, LB 209, § 2; Laws 2008, LB911, § 7; Laws 2011, LB215, § 3; Laws 2013, LB93, § 2; Laws 2014, LB983, § 8; Laws 2016, LB311, § 5.

**60-479.01 Fraudulent document recognition training; criminal history record information check; lawful status check; cost.**

(1) All persons handling source documents or engaged in the issuance of new, renewed, or reissued operators' licenses or state identification cards shall have periodic fraudulent document recognition training.

(2) All persons and agents of the department involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or who have the ability to affect information on such licenses or cards shall be subject to a criminal history record information check, including a check of prior employment references, and a lawful status check as required by 6 C.F.R. part 37, as such part existed on January 1, 2021. Such persons and agents shall provide fingerprints which shall be submitted to the Federal Bureau of Investigation. The bureau shall use its records for the criminal history record information check.

(3) Upon receipt of a request pursuant to subsection (2) of this section, the Nebraska State Patrol shall undertake a search for criminal history record

information relating to such applicant, including transmittal of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information concerning the applicant from federal repositories of such information and repositories of such information in other states, if authorized by federal law. The Nebraska State Patrol shall issue a report to the employing public agency that shall include the criminal history record information concerning the applicant. The cost of any background check shall be borne by the employer of the person or agent.

(4) Any person convicted of any disqualifying offense as provided in 6 C.F.R. part 37, as such part existed on January 1, 2021, shall not be involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or involved in any capacity in which such person would have the ability to affect information on such licenses or cards. Any employee or prospective employee of the department shall be provided notice that he or she will undergo such criminal history record information check prior to employment or prior to any involvement with the issuance of operators' licenses or state identification cards.

**Source:** Laws 2008, LB911, § 8; Laws 2011, LB215, § 4; Laws 2012, LB751, § 18; Laws 2013, LB35, § 4; Laws 2014, LB776, § 5; Laws 2015, LB313, § 5; Laws 2016, LB929, § 7; Laws 2017, LB263, § 63; Laws 2018, LB909, § 76; Laws 2019, LB79, § 12; Laws 2020, LB944, § 52; Laws 2021, LB149, § 10.  
Effective date August 28, 2021.

#### **60-480 Operators' licenses; classification.**

(1) Operators' licenses issued by the department pursuant to the Motor Vehicle Operator's License Act shall be classified as follows:

(a) Class O license. The operator's license which authorizes the person to whom it is issued to operate on highways any motor vehicle except a commercial motor vehicle or motorcycle;

(b) Class M license. The operator's license or endorsement on a Class O license, provisional operator's permit, learner's permit, school permit, or commercial driver's license which authorizes the person to whom it is issued to operate a motorcycle on highways;

(c) CDL-commercial driver's license. The operator's license which authorizes the person to whom it is issued to operate a class of commercial motor vehicle or any motor vehicle, except a motorcycle, on highways;

(d) CLP-commercial learner's permit. A permit which when carried with a Class O license authorizes an individual to operate a class of commercial motor vehicle when accompanied by a holder of a valid commercial driver's license for purposes of behind-the-wheel training. When issued to a commercial driver's license holder, a CLP-commercial learner's permit serves as authorization for accompanied behind-the-wheel training in a commercial motor vehicle for which the holder's current commercial driver's license is not valid;

(e) RCDL-restricted commercial driver's license. The class of commercial driver's license which, when held with an annual seasonal permit, authorizes a seasonal commercial motor vehicle operator as defined in section 60-4,146.01

to operate any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle for purposes of a farm-related or ranch-related service industry as defined in such section within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served as provided in such section or any other motor vehicle, except a motorcycle, on highways;

(f) POP-provisional operator's permit. A motor vehicle operating permit with restrictions issued pursuant to section 60-4,120.01 to a person who is at least sixteen years of age but less than eighteen years of age which authorizes the person to operate any motor vehicle except a commercial motor vehicle or motorcycle;

(g) SCP-school permit. A permit issued to a student between fourteen years and two months of age and sixteen years of age for the purpose of driving in accordance with the requirements of section 60-4,124;

(h) FMP-farm permit. A permit issued to a person for purposes of operating farm tractors and other motorized implements of farm husbandry on highways in accordance with the requirements of section 60-4,126;

(i) LPD-learner's permit. A permit issued in accordance with the requirements of section 60-4,123 to a person at least fifteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, for learning purposes when accompanied by a licensed operator who is at least twenty-one years of age and who possesses a valid operator's license issued by this state or another state;

(j) LPE-learner's permit. A permit issued to a person at least fourteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, while learning to drive in preparation for application for a school permit;

(k) EDP-employment driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,129 and 60-4,130;

(l) IIP-ignition interlock permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, which is equipped with an ignition interlock device;

(m) SEP-seasonal permit. A permit issued to a person who holds a restricted commercial driver's license authorizing the person to operate a commercial motor vehicle, as prescribed by section 60-4,146.01, for no more than one hundred eighty consecutive days in any twelve-month period. The seasonal permit shall be valid and run from the date of original issuance of the permit for one hundred eighty days and from the date of annual revalidation of the permit;

(n) MHP-medical hardship driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,130.01 and 60-4,130.02; and

(o) SPP-24/7 sobriety program permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the 24/7 Sobriety Program Act.



(2) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1989, LB 285, § 30; Laws 1990, LB 980, § 8; Laws 1993, LB 105, § 6; Laws 1993, LB 420, § 4; Laws 1998, LB 320, § 2; Laws 1999, LB 704, § 4; Laws 2001, LB 387, § 3; Laws 2005, LB 675, § 1; Laws 2008, LB736, § 1; Laws 2014, LB983, § 9; Laws 2018, LB909, § 77; Laws 2021, LB271, § 8.  
Operative date July 1, 2022.

Cross References

24/7 Sobriety Program Act, see section 60-701.

**60-480.01 Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.**

(1)(a) Undercover drivers' licenses may be issued to federal, state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover drivers' licenses may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover drivers' licenses are not for personal use.

(b) The director shall prescribe a form for agencies to apply for undercover drivers' licenses. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover drivers' licenses are to be used only for legitimate criminal investigatory purposes, and a statement that undercover drivers' licenses are not for personal use.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fees prescribed in section 60-4,115. If the undercover drivers' licenses will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover drivers' licenses will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover drivers' licenses will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover drivers' licenses will be used for such a purpose, he or she may issue the undercover drivers' licenses in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover drivers' licenses is final.

(4) The Department of Motor Vehicles shall keep records pertaining to undercover drivers' licenses confidential, and such records shall not be subject to public disclosure. Any person who receives information pertaining to undercover drivers' licenses in the course of his or her employment and who

discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

(5) The contact person shall return the undercover drivers' licenses to the Department of Motor Vehicles if:

- (a) The undercover drivers' licenses expire and are not renewed;
- (b) The purpose for which the undercover drivers' licenses were issued has been completed or terminated;
- (c) The persons for whom the undercover drivers' licenses were issued cease to be employees of the agency; or
- (d) The director requests their return.

**Source:** Laws 1997, LB 256, § 6; Laws 2007, LB296, § 228; Laws 2009, LB28, § 2; Laws 2009, LB331, § 9.

#### **60-481 Driving rules; publication; copy to licensee.**

The director pursuant to law shall publish a synopsis or summary of the statutory driving rules of this state, together with such cautionary and advisory comments as may to him or her seem fit, and shall deliver a copy of such synopsis or summary without charge with each operator's license. Such rules shall contain a summary of the state's laws for operating a motor vehicle to avoid arrest.

**Source:** Laws 1937, c. 141, § 21, p. 517; C.S.Supp.,1941, § 60-426; R.S.1943, § 60-440; R.S.1943, (1978), § 60-440; Laws 1981, LB 76, § 4; R.S.1943, (1988), § 60-406.08; Laws 1989, LB 285, § 31.

#### **60-482 Rules and regulations.**

The director may adopt and promulgate such rules and regulations as may be necessary to carry out the Motor Vehicle Operator's License Act.

**Source:** Laws 1977, LB 90, § 7; Laws 1981, LB 204, § 100; R.S.1943, (1988), § 60-406.06; Laws 1989, LB 285, § 32; Laws 1994, LB 1061, § 3; Laws 2019, LB270, § 32.

#### **60-483 Operator's license; numbering; records; abstracts of operating records; fees; information to United States Selective Service System; when; reciprocity agreement with foreign country.**

(1) The director shall assign a distinguishing number to each operator's license issued and shall keep a record of the same which shall be open to public inspection by any person requesting inspection of such record who qualifies under section 60-2906 or 60-2907. Any person requesting such driver record information shall furnish to the Department of Motor Vehicles (a) verification of identity and purpose that the requester is entitled under section 60-2906 or 60-2907 to disclosure of the personal information in the record, (b) the name of the person whose record is being requested, and (c) when the name alone is insufficient to identify the correct record, the department may request additional identifying information. The department shall, upon request of any requester, furnish a certified abstract of the operating record of any person, in either hard copy or electronically, and shall charge the requester a fee of three dollars per abstract.

(2) The department shall remit any revenue generated under subsections (1) through (5) of this section to the State Treasurer, and the State Treasurer shall credit eight and one-third percent to the Department of Motor Vehicles Cash Fund, fifty-eight and one-third percent to the General Fund, and thirty-three and one-third percent to the Records Management Cash Fund.

(3) The director shall, upon receiving a request and an agreement from the United States Selective Service System to comply with requirements of this section, furnish driver record information to the United States Selective Service System to include the name, post office address, date of birth, sex, and social security number of licensees. The United States Selective Service System shall pay all costs incurred by the department in providing the information but shall not be required to pay any other fee required by law for information. No driver record information shall be furnished to the United States Selective Service System regarding any female, nor regarding any male other than those between the ages of seventeen years and twenty-six years. The information shall only be used in the fulfillment of the required duties of the United States Selective Service System and shall not be furnished to any other person.

(4) The director shall keep a record of all applications for operators' licenses that are disapproved with a brief statement of the reason for disapproval of the application.

(5) The director may establish a monitoring service which provides information on operating records that have changed due to any adjudicated traffic citation or administrative action. The director shall charge a fee of six cents per operating record searched pursuant to this section and the fee provided in subsection (1) of this section for each abstract returned as a result of the search.

(6) Driver record header information, including name, license number, date of birth, address, and physical description, from every driver record maintained by the department may be made available so long as the Uniform Motor Vehicle Records Disclosure Act is not violated. Monthly updates, including all new records, may also be made available. There shall be a fee of eighteen dollars per thousand records. All fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(7) The department may enter into a reciprocity agreement with a foreign country to provide for the mutual recognition and reciprocal exchange of a valid operator's license issued by this state or the foreign country if the department determines that the licensing standards of the foreign country are comparable to those of this state. Any such agreement entered into by the department shall not include the mutual recognition and reciprocal exchange of a commercial driver's license.

(8) Beginning July 1, 2021, for any record provided pursuant to subsection (1) of this section, the requester shall be required to pay, in addition to the fee prescribed in such subsection, a fee of four dollars and fifty cents per record. Fifty cents shall be credited to the Department of Motor Vehicles Cash Fund and four dollars shall be credited to the Operator's License Services System Replacement and Maintenance Fund.

**Source:** Laws 1929, c. 149, § 9, p. 516; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 516; Laws 1941, c. 176, § 2, p. 688; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-412; Laws 1961, c. 315, § 9, p. 1005;

Laws 1961, c. 316, § 9, p. 1014; Laws 1963, c. 360, § 1, p. 1154; Laws 1965, c. 384, § 1, p. 1238; Laws 1973, LB 319, § 1; Laws 1974, LB 974, § 1; Laws 1978, LB 502, § 1; Laws 1983, LB 326, § 1; Laws 1984, LB 694, § 2; Laws 1984, LB 711, § 1; Laws 1987, LB 300, § 2; Laws 1987, LB 767, § 1; R.S.1943, (1988), § 60-412; Laws 1989, LB 285, § 33; Laws 1993, LB 491, § 10; Laws 1995, LB 467, § 9; Laws 1997, LB 590, § 2; Laws 1997, LB 635, § 19; Laws 1997, LB 720, § 17; Laws 2000, LB 1317, § 6; Laws 2001, LB 106, § 1; Laws 2003, LB 562, § 3; Laws 2004, LB 560, § 37; Laws 2017, LB263, § 64; Laws 2021, LB106, § 1. Effective date April 8, 2021.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

**60-483.01 National Driver Register; employer check; fee.**

An employer may apply to the Department of Motor Vehicles for a file check from the National Driver Register on a current or prospective employee. The employer shall pay a fee of two dollars for each check. Upon receipt of the application and fee, the department shall furnish the check to the employer and remit the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1995, LB 467, § 8.

**60-484 Operator’s license required, when; state identification card; application.**

(1) Except as otherwise provided in the Motor Vehicle Operator’s License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator’s license for that purpose.

(2) Application for an operator’s license or a state identification card shall be made in a manner prescribed by the department.

(3) The applicant shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subsection (6) of this section, and a brief physical description of himself or herself. The applicant (a) may also complete the voter registration portion pursuant to section 32-308, (b) shall be provided the advisement language required by subsection (5) of section 60-6,197, (c) shall answer the following:

(i) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(A) lost voluntary control or consciousness ... yes ... no

(B) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(C) experienced disorientation ... yes ... no

(D) experienced seizures ... yes ... no

(E) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(ii) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(iii) Since the issuance of your last driver's license/permit, has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: ....., and (d) may answer the following:

(i) Do you wish to register to vote as part of this application process?

(ii) Do you wish to have a veteran designation displayed on the front of your operator's license or state identification card to show that you served in the armed forces of the United States? (To be eligible you must register with the Nebraska Department of Veterans' Affairs registry.)

(iii) Do you wish to include your name in the Donor Registry of Nebraska and donate your organs and tissues at the time of your death?

(iv) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(v) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(4) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the license or card is true and correct.

(5) The social security number shall not be printed on the operator's license or state identification card and shall be used only (a) to furnish information to the United States Selective Service System under section 60-483, (b) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (c) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (d) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, (e) to furnish information to the Department of Revenue under section 77-362.02, or (f) to furnish information to the Secretary of State for purposes of the Election Act.

(6)(a) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall be those provided in subsection (1) of section 60-484.04.

(b) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (6)(a) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to

department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(c) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(7) Any individual applying for an operator's license or a state identification card who indicated his or her wish to have a veteran designation displayed on the front of such license or card shall comply with section 60-4,189.

(8) No person shall be a holder of an operator's license and a state identification card at the same time. A person who has a digital image and digital signature on file with the department may apply electronically to change his or her Class O operator's license to a state identification card.

**Source:** Laws 1929, c. 148, § 1, p. 512; C.S.1929, § 60-401; Laws 1937, c. 141, § 11, p. 510; C.S.Supp.,1941, § 60-401; R.S.1943, § 60-403; Laws 1945, c. 141, § 1, p. 446; Laws 1947, c. 207, § 1, p. 675; Laws 1957, c. 366, § 35, p. 1269; Laws 1961, c. 315, § 2, p. 998; Laws 1961, c. 316, § 2, p. 1007; Laws 1984, LB 811, § 2; Laws 1986, LB 153, § 9; Laws 1986, LB 878, § 1; Laws 1987, LB 300, § 1; R.S.1943, (1988), § 60-403; Laws 1989, LB 285, § 35; Laws 1991, LB 457, § 44; Laws 1992, LB 1178, § 1; Laws 1994, LB 76, § 571; Laws 1994, LB 211, § 2; Laws 1995, LB 467, § 10; Laws 1996, LB 939, § 1; Laws 1996, LB 1073, § 1; Laws 1997, LB 635, § 20; Laws 1999, LB 147, § 1; Laws 1999, LB 704, § 5; Laws 2000, LB 1317, § 7; Laws 2001, LB 34, § 1; Laws 2001, LB 387, § 4; Laws 2001, LB 574, § 5; Laws 2003, LB 228, § 12; Laws 2004, LB 208, § 4; Laws 2004, LB 559, § 1; Laws 2005, LB 1, § 1; Laws 2005, LB 76, § 5; Laws 2008, LB911, § 9; Laws 2010, LB879, § 3; Laws 2011, LB215, § 5; Laws 2013, LB93, § 3; Laws 2014, LB661, § 16; Laws 2014, LB983, § 10; Laws 2016, LB47, § 1; Laws 2016, LB311, § 6; Laws 2018, LB909, § 78; Laws 2019, LB192, § 1.

#### Cross References

**Address Confidentiality Act**, see section 42-1201.

**Donor Registry of Nebraska**, see section 71-4822.

**Election Act**, see section 32-101.

**Nebraska Department of Veterans' Affairs registry**, see section 80-414.

Driving a motor vehicle requires that driver be licensed; there is no unfettered constitutional right to travel by whatever means a person chooses. *State v. Meints*, 223 Neb. 199, 388 N.W.2d 813 (1986).

Licensure of drivers hereunder is in interest of public safety and, when one drives in violation of statute, it is evidence of negligence which may be considered by the jury. *Benton v. State*, 124 Neb. 485, 247 N.W. 21 (1933).

#### 60-484.01 Digital system authorized.

It is the intent of the Legislature to authorize the Department of Motor Vehicles to begin issuing operators' licenses and state identification cards using digital images and digital signatures and to allow for electronic renewal of certain operators' licenses and state identification cards. The department shall implement such a digital system.

**Source:** Laws 2001, LB 574, § 3; Laws 2005, LB 1, § 2.

#### 60-484.02 Digital images and signatures; use; confidentiality; prohibited acts; violation; penalty.

(1) Each applicant for an operator's license or state identification card shall have his or her digital image captured. Digital images shall be preserved for use as prescribed in sections 60-4,119, 60-4,151, and 60-4,180. The images shall be used for issuing operators' licenses and state identification cards. The images may be retrieved only by the Department of Motor Vehicles for issuing renewal and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(2) Upon application for an operator's license or state identification card, each applicant shall provide his or her signature in a form prescribed by the department. Digital signatures shall be preserved for use on original, renewal, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (4) of this section.

(3) No officer, employee, agent, or contractor of the department or law enforcement officer shall release a digital image except to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a federal, state, or local agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department or law enforcement officer that knowingly discloses or knowingly permits disclosure of a digital image or digital signature in violation of this section shall be guilty of a Class I misdemeanor.

(4) No officer, employee, agent, or contractor of the department or law enforcement officer shall release a digital signature except (a) to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a state or federal agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release or (b) to the office of the Secretary of State for the purpose of voter registration as described in section 32-304, 32-308, or 32-309 upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. No employee or official in the office of the Secretary of State shall release a digital signature except to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a state or federal agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department, law enforcement officer, or employee or official in the office of the Secretary of State that knowingly discloses or knowingly permits disclosure of a digital signature in violation of this section shall be guilty of a Class I misdemeanor.

**Source:** Laws 2001, LB 574, § 4; Laws 2004, LB 560, § 38; Laws 2005, LB 1, § 3; Laws 2009, LB372, § 1; Laws 2010, LB805, § 5; Laws 2014, LB661, § 17; Laws 2014, LB777, § 3.

**60-484.03 Operators' licenses; state identification cards; department; retain copies of source documents.**

The department shall retain copies of source documents presented by all individuals applying for or holding operators' licenses or state identification cards. Copies retained by the department shall be held in secured storage and managed to meet the requirements of the Uniform Motor Vehicle Records Disclosure Act and sections 60-484, 60-484.02, and 60-4,144.

**Source:** Laws 2011, LB215, § 6; Laws 2014, LB983, § 11.

**Cross References**

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

**60-484.04 Operators' licenses; state identification cards; applicant present evidence of lawful status.**

(1) The Legislature finds and declares that section 202(c)(2)(B)(i) through (x) of the federal REAL ID Act of 2005, Public Law 109-13, enumerated categories of individuals who may demonstrate lawful status for the purpose of eligibility for a federally secure motor vehicle operator's license or state identification card. The Legislature further finds and declares that it was the intent of the Legislature in 2011 to adopt the enumerated categories by the passage of Laws 2011, LB215. The Legislature declares that the passage of Laws 2015, LB623, is for the limited purpose of reaffirming the original legislative intent of Laws 2011, LB215. Except as provided in section 60-4,144 with respect to operators of commercial motor vehicles, before being issued any other type of operator's license or a state identification card under the Motor Vehicle Operator's License Act, the department shall require an applicant to present valid documentary evidence that he or she has lawful status in the United States as enumerated in section 202(c)(2)(B)(i) through (x) of the federal REAL ID Act of 2005, Public Law 109-13. Lawful status may be shown by:

- (a) A valid, unexpired United States passport;
- (b) A certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth;
- (c) A Consular Report of Birth Abroad (CRBA) issued by the United States Department of State, Form FS-240, DS-1350, or FS-545;
- (d) A valid, unexpired Permanent Resident Card (Form I-551) issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services;
- (e) An unexpired employment authorization document (EAD) issued by the United States Department of Homeland Security, Form I-766 or Form I-688B;
- (f) An unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States;
- (g) A Certificate of Naturalization issued by the United States Department of Homeland Security, Form N-550 or Form N-570;
- (h) A Certificate of Citizenship, Form N-560 or Form N-561, issued by the United States Department of Homeland Security;
- (i) A driver's license or identification card issued in compliance with the standards established by the REAL ID Act of 2005, Public Law 109-13, division B, section 1, 119 Stat. 302; or



(j) Such other documents as the director may approve.

(2)(a) If an applicant presents one of the documents listed under subdivision (1)(a), (b), (c), (d), (g), or (h) of this section, the verification of the applicant's identity in the manner prescribed in section 60-484 will also provide satisfactory evidence of lawful status.

(b) If the applicant presents one of the identity documents listed under subdivision (1)(e), (f), or (i) of this section, the verification of the identity documents does not provide satisfactory evidence of lawful status. The applicant must also present a second document from subsection (1) of this section or documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or other federal agencies, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that the applicant has lawful status as enumerated in section 202(c)(2)(B)(i) through (x) of the federal REAL ID Act of 2005, Public Law 109-13.

(3) An applicant may present other documents as designated by the director as proof of lawful status as enumerated in section 202(c)(2)(B)(i) through (x) of the federal REAL ID Act of 2005, Public Law 109-13. Any documents accepted shall be recorded according to a written exceptions process established by the director.

**Source:** Laws 2011, LB215, § 7; Laws 2014, LB983, § 12; Laws 2015, LB623, § 1; Laws 2020, LB944, § 53.

**60-484.05 Operators' licenses; state identification cards; temporary; when issued; period valid; special notation; renewal; return of license or card, when.**

(1) The department shall only issue an operator's license or a state identification card that is temporary to any applicant who presents documentation under sections 60-484 and 60-484.04 that shows his or her authorized stay in the United States is temporary. An operator's license or a state identification card that is temporary shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(2) An operator's license or state identification card that is temporary shall clearly indicate that it is temporary with a special notation on the front of the license or card and shall state the date on which it expires.

(3) An operator's license or state identification card that is temporary may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the operator's license or state identification card that is temporary has been extended by the United States Department of Homeland Security.

(4) If an individual has an operator's license or a state identification card issued based on approved lawful status granted under section 202(c)(2)(B)(i) through (x) of the federal REAL ID Act of 2005, Public Law 109-13, and the basis for the approved lawful status is terminated, the individual shall return the operator's license or state identification card to the Department of Motor Vehicles.

**Source:** Laws 2011, LB215, § 8; Laws 2014, LB983, § 13; Laws 2015, LB623, § 2; Laws 2020, LB944, § 54.

**60-484.06 Operators' licenses; state identification cards; department; power to verify documents.**

Before issuing any operator's license or state identification card under the Motor Vehicle Operator's License Act, the department may verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by a person pursuant to sections 60-484, 60-484.04, and 60-4,144.

**Source:** Laws 2011, LB215, § 9; Laws 2014, LB983, § 14.

**60-485 Repealed. Laws 2012, LB 751, § 57.****60-486 Operator's license; license suspended or revoked; effect; appeal.**

(1) No person shall be licensed to operate a motor vehicle by the State of Nebraska if such person has an operator's license currently under suspension or revocation in this state or any other state or jurisdiction in the United States.

(2) If a license is issued to a person while his or her operator's license was suspended or revoked in this state or any other state or jurisdiction, the Department of Motor Vehicles may cancel the license upon forty-five days' written notice by regular United States mail to the licensee's last-known address. The cancellation may be appealed as provided in section 60-4,105.

(3) When such a person presents to the department an official notice from the state or jurisdiction that suspended or revoked his or her motor vehicle operator's license that such suspension or revocation has been terminated, he or she may then be licensed to operate a motor vehicle by the State of Nebraska.

**Source:** Laws 1986, LB 153, § 7; R.S.1943, (1988), § 60-403.05; Laws 1989, LB 285, § 37; Laws 1999, LB 704, § 6; Laws 2001, LB 38, § 13; Laws 2012, LB751, § 19.

**60-487 Cancellation of certain licenses or permits; when.**

(1) If any magistrate or judge finds in his or her judgment of conviction that the application or issuance certificate pursuant to which the director has issued an operator's license under the Motor Vehicle Operator's License Act contains any false or fraudulent statement deliberately and knowingly made to any officer as to any matter material to the issuance of such license or does not contain required or correct information or that the person to whom the license was issued was not eligible to receive such license, then the license shall be absolutely void from the date of issue and such motor vehicle operator shall be deemed to be not licensed to operate a motor vehicle. Such license shall be at once canceled of record in his or her office by the director upon receipt of a copy of such judgment of conviction. The director may, upon his or her own motion, summarily cancel any license for any of the reasons set forth in this section if such reason or reasons affirmatively appear on his or her official records.

(2) If the director determines, in a check of an applicant's license status and record prior to issuing a CLP-commercial learner's permit or commercial driver's license, or at any time after the CLP-commercial learner's permit or commercial driver's license is issued, that the applicant falsified information contained in the application or in the medical examiner's certificate, the director may summarily cancel the person's CLP-commercial learner's permit

or commercial driver's license or his or her pending application as provided in subsection (1) of this section and disqualify the person from operating a commercial motor vehicle for sixty days.

**Source:** Laws 1929, c. 148, § 10, p. 517; C.S.1929, § 60-410; Laws 1937, c. 141, § 20, p. 517; Laws 1941, c. 124, § 1, p. 469; C.S.Supp.,1941, § 60-410; R.S.1943, § 60-416; R.S.1943, (1988), § 60-416; Laws 1989, LB 285, § 38; Laws 1991, LB 420, § 7; Laws 1999, LB 704, § 7; Laws 2001, LB 38, § 14; Laws 2003, LB 562, § 4; Laws 2011, LB215, § 10; Laws 2014, LB983, § 15; Laws 2016, LB666, § 3.

**60-488 Nonresidents; license requirements; immunity.**

(1) A nonresident shall not be prevented from operating a motor vehicle upon the highways of this state during the period within which he or she may lawfully operate such motor vehicle in the state under the general motor vehicle laws of this state, but in no event shall such immunity extend beyond a period of thirty days continuous residence in the State of Nebraska.

(2) Subsection (1) of this section shall be subject to the following limitations:

(a) Such nonresident shall be duly licensed under the motor vehicle laws of the state of his or her residence or have complied with the laws of the state of his or her residence relating to the registration or licensing of motor vehicles and conformed to the laws of such state of residence in relation to the operators of motor vehicles;

(b) A nonresident who is serving in this state on active duty as a member of the United States Armed Forces, or the spouse of any such person or a dependent of such member of the armed forces, shall be exempt from the licensing requirements of this state if he or she is duly licensed under the laws of the state of his or her residence;

(c) A nonresident who is considered to be a full-time student in any institution of postsecondary education in this state shall be exempt from the licensing requirements of this state if such person is duly licensed under the laws of the state of his or her residence; and

(d) A nonresident certified by the Department of Labor as engaged in temporary agricultural employment in Nebraska for a period of not to exceed sixty days may be granted an additional thirty days' immunity if a similar immunity is granted by the state of his or her permanent residence to residents of Nebraska while temporarily employed in agricultural employment in such state.

**Source:** Laws 1929, c. 148, § 11, p. 517; C.S.1929, § 60-411; R.S.1943, § 60-410; Laws 1965, c. 383, § 2, p. 1236; Laws 1969, c. 505, § 1, p. 2080; Laws 1976, LB 846, § 1; R.S.1943, (1988), § 60-410; Laws 1989, LB 285, § 39; Laws 1996, LB 974, § 1; Laws 1999, LB 3, § 3.

Nonresident can only operate a motor vehicle in this state in accordance with its laws. State v. Smith, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-489 Operator's license; duty to carry and exhibit; exception; officers; power to demand presentation.**

Except for a farm permit issued under section 60-4,126, the operator's license shall at all times be carried by the licensee when operating a motor

vehicle on the highways of this state and shall be presented by the licensee for examination, or he or she shall present proof of ownership of the same, upon demand by any officer, employee, or agent of the Nebraska State Patrol or police or peace officer recognized as such by the laws of this state. Such officer, employee, or agent shall, in every case of making demand on the motor vehicle operator to show an operator's license, first display proper evidence of his or her lawful authority to act as an officer of the law. Except as provided in section 29-215, no officer, except an officer, agent, or employee of the Nebraska State Patrol, the Superintendent of Law Enforcement and Public Safety, the county sheriff, or their authorized deputies or subordinates, shall exercise the authority to demand presentation of an operator's license outside the boundaries of any incorporated cities and villages. A farm permit issued under section 60-4,126 need not be carried on the person but shall be produced for examination within twenty-four hours after a lawful demand therefor has been made under this section.

**Source:** Laws 1929, c. 148, § 9, p. 516; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 516; Laws 1941, c. 176, § 2, p. 688; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-413; Laws 1971, LB 725, § 2; R.S.1943, (1988), § 60-413; Laws 1989, LB 285, § 40; Laws 1994, LB 254, § 3; Laws 2001, LB 574, § 6.

A violation of a city ordinance which tracks this section is a two-point violation under section 39-669.26 (transferred to section 60-4,182), for which a report to the Director of Motor Vehicles is required by section 39-669.22 (transferred to section 60-497.01). *Maciejewski v. Sullivan*, 193 Neb. 598, 228 N.W.2d 294 (1975).

The offense of failing to carry an operator's license when operating a motor vehicle on the public highways is a traffic

violation for which two points are to be assessed, and for which a report to the Department of Motor Vehicles is required. *Coffee v. Sullivan*, 191 Neb. 781, 217 N.W.2d 918 (1974).

Person is not permitted to operate a motor vehicle until he has secured a current operator's license. *Martindale v. State*, 181 Neb. 64, 147 N.W.2d 6 (1966).

### **60-490 Operators' licenses; state identification cards; expiration; renewal.**

(1) Operators' licenses issued to persons required to use bioptic or telescopic lenses as provided in section 60-4,118 shall expire annually on the licensee's birthday for all such licenses issued prior to January 1, 2007, and on the licensee's birthday in the second year after issuance, unless specifically restricted to a shorter renewal period as determined under section 60-4,118, for all such licenses issued on or after January 1, 2007.

(2) Except for state identification cards issued to persons less than twenty-one years of age, all state identification cards expire on the cardholder's birthday in the fifth year after issuance. A state identification card issued to a person who is less than twenty-one years of age expires on his or her twenty-first birthday or on his or her birthday in the fifth year after issuance, whichever comes first.

(3) Except as otherwise provided in subsection (1) of this section and section 60-4,147.05 and except for operators' licenses issued to persons less than twenty-one years of age, operators' licenses issued pursuant to the Motor Vehicle Operator's License Act expire on the licensee's birthday in the fifth year after issuance. An operator's license issued to a person less than twenty-one years of age expires on his or her twenty-first birthday. Except as otherwise provided in section 60-4,147.05, the Department of Motor Vehicles shall mail out a renewal notice for each operator's license at least thirty days before the expiration of the operator's license.

(4)(a) The expiration date shall be stated on each operator's license or state identification card.

(b) Except as otherwise provided in section 60-4,147.05, licenses and state identification cards issued to persons who are twenty-one years of age or older which expire under this section may be renewed within a ninety-day period before the expiration date. Any person who is twenty-one years of age or older and who is the holder of a valid operator's license or state identification card may renew his or her license or card prior to the ninety-day period before the expiration date on such license or card if such applicant furnishes proof that he or she will be absent from the state during the ninety-day period prior to such expiration date.

(c) A person who is twenty years of age may apply for an operator's license or a state identification card within sixty days prior to his or her twenty-first birthday. The operator's license or state identification card may be issued within ten days prior to such birthday.

(d) A person who is under twenty years of age and who holds a state identification card may apply for renewal within a ninety-day period prior to the expiration date.

**Source:** Laws 1989, LB 285, § 34; Laws 1990, LB 742, § 2; Laws 1993, LB 7, § 1; Laws 1998, LB 309, § 3; Laws 1998, LB 320, § 3; Laws 1999, LB 704, § 8; Laws 2001, LB 574, § 7; Laws 2005, LB 1, § 4; Laws 2005, LB 76, § 6; Laws 2006, LB 1008, § 1.

#### **60-491 Prohibited acts.**

It shall be unlawful for any person:

(1) To display or cause or permit to be displayed or have in his or her possession any canceled, revoked, suspended, impounded, fictitious, or fraudulently altered operator's license or state identification card issued by the State of Nebraska or any other state;

(2) To lend his or her operator's license or state identification card to any person or knowingly permit the use thereof by another;

(3) To display or represent as one's own any operator's license or state identification card not issued to him or her by the State of Nebraska or any other state;

(4) To fail or refuse to surrender to the director upon his or her lawful demand any operator's license or state identification card which has been suspended, revoked, or canceled;

(5) To use a false or fictitious name in applying for an operator's license or state identification card or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in applying for an operator's license or state identification card;

(6) To permit any unlawful use of an operator's license or state identification card issued to him or her by the State of Nebraska or any other state;

(7) To do any act forbidden or fail to perform any act required by the Motor Vehicle Operator's License Act;

(8) To make any false affidavit or knowingly to swear or affirm falsely to any matter or thing required by the terms of the act to be sworn to or affirmed. Such person shall be guilty of perjury and, upon conviction thereof, shall be punished as other persons committing perjury are punishable;

(9) To cause or knowingly permit his or her child or ward under the age of sixteen years to drive a motor vehicle upon any highway when such minor is not authorized under the act or is in violation of any of the provisions of the act;

(10) To authorize or knowingly permit a motor vehicle owned by him or her or under his or her control to be driven upon any highway by any person who is not authorized under the act or is in violation of any of the provisions of the act; or

(11) To manufacture any fraudulent state identification card whether of the State of Nebraska or any other state.

**Source:** Laws 1937, c. 141, § 26, p. 521; Laws 1941, c. 124, § 6, p. 474; C.S.Supp.,1941, § 60-431; R.S.1943, § 60-417; R.S.1943, (1988), § 60-417; Laws 1989, LB 284, § 10; Laws 1989, LB 285, § 41; Laws 1991, LB 335, § 1; Laws 1999, LB 704, § 9; Laws 2001, LB 38, § 15.

A person who violates subsection (10) of this section is guilty of negligence and liable for damages proximately resulting from the negligent operation of the motor vehicle. *DeWester v. Watkins*, 275 Neb. 173, 745 N.W.2d 330 (2008).

#### **60-492 Impersonating officer; penalty.**

Any unauthorized person impersonating an officer under color of the Motor Vehicle Operator's License Act shall be guilty of a Class IV felony.

**Source:** Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 516; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-414; Laws 1977, LB 39, § 78; R.S.1943, (1988), § 60-414; Laws 1989, LB 285, § 42.

#### **60-493 Organ and tissue donation; county treasurer or licensing staff; distribute brochure; additional information; department; duty.**

(1) When a person applies for an operator's license or state identification card, the county treasurer or licensing staff of the Department of Motor Vehicles shall distribute a brochure provided by an organ and tissue procurement organization and approved by the Department of Health and Human Services containing a description and explanation of the Revised Uniform Anatomical Gift Act to each person applying for a new or renewal license or card.

(2) If an individual desires to receive additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska as indicated on an application and retained by the department under section 60-484, 60-4,144, or 60-4,181, the department shall notify a representative of the federally designated organ procurement organization for Nebraska within five working days of the name and address of such individual.

**Source:** Laws 1977, LB 115, § 3; R.S.1943, (1988), § 60-406.01; Laws 1989, LB 285, § 43; Laws 1992, LB 1178, § 2; Laws 1996, LB 1044, § 280; Laws 1999, LB 704, § 10; Laws 2001, LB 34, § 2; Laws 2004, LB 559, § 2; Laws 2007, LB296, § 229; Laws 2010, LB1036, § 31; Laws 2016, LB311, § 7.

#### **Cross References**

Revised Uniform Anatomical Gift Act, see section 71-4824.

**60-494 Operator's license; state identification card; organ and tissue donation information; department; duty.**

(1) Each operator's license and state identification card shall include a special notation on the front of the license or card if the licensee or cardholder is at least sixteen years of age and indicates on the application or issuance certificate under section 60-484 or 60-4,144 his or her wish to be an organ and tissue donor.

(2) The status as an organ and tissue donor shall continue until amended or revoked by the licensee or cardholder as provided in subsection (4) of this section or section 71-4829. The status as an organ and tissue donor is not changed by the expiration, suspension, cancellation, revocation, or impoundment of the license or card.

(3) Any person whose operator's license or state identification card indicates his or her status as an organ and tissue donor may obtain a replacement license or card without a notation of such status. The fee for such replacement license or card shall be the fee provided in section 60-4,115.

(4) A licensee or cardholder may change his or her status as a donor by indicating the desire that his or her name not be included in the Donor Registry of Nebraska on an application for an operator's license, a state identification card, or a replacement license or card under subsection (3) of this section. A licensee or cardholder may also change or limit the extent of his or her status as a donor by (a) Internet access to the Donor Registry of Nebraska, (b) telephone request to the registry, or (c) other methods approved by the federally designated organ procurement organization for Nebraska.

(5) The department shall electronically transfer to the federally designated organ procurement organization for Nebraska all information which appears on the face of an original or replacement operator's license or state identification card except the image and signature of each person whose license or card includes the notation described in subsection (1) of this section.

**Source:** Laws 1984, LB 711, § 2; Laws 1985, LB 585, § 1; R.S.1943, (1988), § 60-412.01; Laws 1989, LB 285, § 44; Laws 1992, LB 1178, § 3; Laws 1999, LB 704, § 11; Laws 2001, LB 34, § 3; Laws 2001, LB 574, § 8; Laws 2004, LB 559, § 3; Laws 2010, LB1036, § 32; Laws 2016, LB47, § 2.

**60-495 Organ and tissue donation; rules and regulations; director; duties; Organ and Tissue Donor Awareness and Education Fund; created; use; investment.**

(1) The director may adopt and promulgate such rules and regulations necessary to carry out sections 60-493 to 60-495 and the duties of the department under the Revised Uniform Anatomical Gift Act. The director shall prepare and furnish all forms and information necessary under the act.

(2) The Organ and Tissue Donor Awareness and Education Fund is created. Department personnel and the county treasurer shall remit all funds contributed under sections 60-484, 60-4,144, and 60-4,181 to the State Treasurer for credit to the fund. The fund shall also include any money credited to the fund pursuant to section 60-3,246. The Department of Health and Human Services shall administer the Organ and Tissue Donor Awareness and Education Fund for the promotion of organ and tissue donation. The department shall use the

fund to assist organizations such as the federally designated organ procurement organization for Nebraska and the State Anatomical Board in carrying out activities which promote organ and tissue donation through the creation and dissemination of educational information. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1977, LB 115, § 5; R.S.1943, (1988), § 60-406.03; Laws 1989, LB 285, § 45; Laws 1999, LB 147, § 2; Laws 2010, LB1036, § 33; Laws 2016, LB311, § 8; Laws 2019, LB270, § 33; Laws 2020, LB944, § 55.

#### Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**Revised Uniform Anatomical Gift Act**, see section 71-4824.

### **60-496 Violation of law; revocation of operator's license; duties of director and Nebraska State Patrol.**

Upon conviction of any person in any court within this state of any violation of (1) any law of this state pertaining to the operation of motor vehicles or (2) any city or village ordinance pertaining to the operation of a motor vehicle in such a manner as to endanger life, limb, or property, except for operating a motor vehicle while under the influence of alcoholic liquor or any drug, the judge of such court may, in his or her discretion, order the revocation of the operator's license of such convicted person to operate a motor vehicle for any purpose for a period of time not less than ten days nor more than one year, unless a greater period of revocation is made mandatory by other provisions of law, or may impound the license for a period of not more than ninety days and order that such person not operate a motor vehicle during the period such license is impounded. Such judge shall immediately notify in detail the director of the action and findings of the court as provided for in sections 60-497.01 to 60-497.04. If the judgment of conviction provides for the revocation of the person's operator's license, the director shall immediately revoke the license and make available to the Superintendent of Law Enforcement and Public Safety an updated record of such revocation. It shall then be the duty of the Nebraska State Patrol to enforce the conditions of such revocation recited in any judgment of conviction.

**Source:** Laws 1929, c. 148, § 12, p. 518; C.S.1929, § 60-412; Laws 1937, c. 140, § 2, p. 505; Laws 1941, c. 124, § 2, p. 470; C.S.Supp.,1941, § 60-412; R.S.1943, § 60-427; Laws 1947, c. 148, § 4, p. 411; Laws 1957, c. 274, § 1, p. 1000; Laws 1957, c. 366, § 40, p. 1273; Laws 1969, c. 508, § 1, p. 2085; Laws 1969, c. 509, § 1, p. 2087; Laws 1973, LB 4, § 2; Laws 1986, LB 153, § 11; R.S.1943, (1988), § 60-427; Laws 1989, LB 285, § 46; Laws 1993, LB 370, § 73; Laws 2001, LB 38, § 16.

This section authorizes suspension of operator's license for endangering life, limb, or property on charge under appropriate statute or ordinance, not for speeding alone. *State v. Mann*, 196 Neb. 824, 246 N.W.2d 604 (1976).

A municipal court is authorized to suspend a driver's license upon conviction under a city or village ordinance for operating a motor vehicle while under the influence of intoxicating liquor. *State v. Lookabill*, 176 Neb. 415, 126 N.W.2d 403 (1964).

Revocation of driver's license does not apply to a simple charge of speeding. *Olson v. State*, 160 Neb. 604, 71 N.W.2d 124 (1955).

On conviction of speeding, driver's license may be suspended. *Hyslop v. State*, 159 Neb. 802, 68 N.W.2d 698 (1955).

Suspension of driver's license as part of sentence was authorized. *Kroger v. State*, 158 Neb. 73, 62 N.W.2d 312 (1954).



License to drive motor vehicle is not a contract between state and licensee which cannot be revoked, and driver's license can be revoked for one year upon his conviction of driving while intoxicated. *Smith v. State*, 124 Neb. 587, 247 N.W. 421 (1933).

**60-497 Conviction of offense authorizing revocation of operator's license; surrender of license; when required; duty of director to revoke.**

Whenever any person is convicted of any offense for which the Motor Vehicle Operator's License Act or the Nebraska Rules of the Road authorizes the revocation of the operator's license, the court in which such conviction is had shall, if revocation is adjudged, require the surrender to it of all operators' licenses then held by the person so convicted. The court shall thereupon forward the operators' licenses together with the action and findings of the court, as provided for in sections 60-497.01 to 60-497.04, to the director. Every court having jurisdiction over offenses committed under the act or any other law of this state regulating the operation of motor vehicles on highways or streets shall forward, in the manner and form provided for in such sections, the action and findings of the court to the director upon the conviction of any person in such court for a violation of any of such laws.

The director shall, upon receipt of such abstract of the judgment of conviction, immediately revoke the operator's license of the person so convicted, as provided in the abstract of the judgment of conviction.

For purposes of the act and the rules, conviction shall mean a final conviction, and forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

**Source:** Laws 1937, c. 141, § 22, p. 517; Laws 1941, c. 124, § 3, p. 471; C.S.Supp.,1941, § 60-427; R.S.1943, § 60-421; Laws 1957, c. 273, § 1, p. 999; R.S.1943, (1988), § 60-421; Laws 1989, LB 285, § 47; Laws 1993, LB 370, § 74; Laws 2001, LB 38, § 17.

**Cross References**

**Nebraska Rules of the Road**, see section 60-601.

Loss of privilege of operating a motor vehicle by suspension or revocation is determinable from records of Department of Motor Vehicles. *State v. Ruggiere*, 180 Neb. 869, 146 N.W.2d 373 (1966).

**60-497.01 Conviction and probation records; abstract of court record; transmission to director; duties.**

(1) An abstract of the court record of every case in which a person is convicted of violating any provision of the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, the Nebraska Rules of the Road, or section 28-524, as from time to time amended by the Legislature, or any traffic regulations in city or village ordinances shall be transmitted within thirty days of sentencing or other disposition by the court to the director. Any abstract received by the director more than thirty days after the date of sentencing or other disposition shall be reported by the director to the State Court Administrator.

(2) Any person violating section 28-306, 28-394, 28-1254, 60-696, 60-697, 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on probation shall be assessed the same points under section 60-4,182 as if such person were not placed on probation unless a court has ordered that such person must obtain an ignition interlock permit in order to operate a motor vehicle with an ignition interlock device pursuant to section 60-6,211.05 and sufficient evidence is

presented to the department that such a device is installed. For any other violation, the director shall not assess such person with any points under section 60-4,182 for such violation when the person is placed on probation until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such probation has been revoked. Upon receiving notice of revocation of probation, the director shall assess to such person the points which such person would have been assessed had the person not been placed on probation. When a person fails to successfully complete probation, the court shall notify the director immediately.

**Source:** Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-794; Laws 1953, c. 219, § 7, p. 771; Laws 1957, c. 164, § 1, p. 579; Laws 1957, c. 165, § 1, p. 582; Laws 1957, c. 366, § 15, p. 1255; Laws 1972, LB 1032, § 247; Laws 1972, LB 1058, § 2; Laws 1973, LB 226, § 25; Laws 1973, LB 317, § 1; R.S.Supp.,1973, § 39-794; Laws 1975, LB 379, § 1; Laws 1987, LB 79, § 1; Laws 1991, LB 420, § 2; R.S.Supp.,1992, § 39-669.22; Laws 1993, LB 370, § 75; Laws 1993, LB 564, § 13; Laws 1993, LB 575, § 15; Laws 2001, LB 38, § 18; Laws 2006, LB 925, § 2; Laws 2008, LB736, § 2; Laws 2009, LB63, § 32; Laws 2011, LB667, § 23.

#### Cross References

**Motor Vehicle Safety Responsibility Act**, see section 60-569.  
**Nebraska Rules of the Road**, see section 60-601.

A certified abstract for conviction report must include judgment of conviction to authorize revocation or suspension of motor vehicle operator's license. *Hyland v. State*, 194 Neb. 737, 235 N.W.2d 236 (1975).

A violation of a city ordinance which tracks section 60-413 is a two-point violation under section 39-669.26 (transferred to section 60-4,182) for which a report to the Director of Motor Vehicles is required by this section. *Maciejewski v. Sullivan*, 193 Neb. 598, 228 N.W.2d 294 (1975).

The offense of failing to carry an operator's license when operating a motor vehicle on the public highways is a traffic violation for which two points are to be assessed, and for which a report to the Department of Motor Vehicles is required. *Coffee v. Sullivan*, 191 Neb. 781, 217 N.W.2d 918 (1974).

Where docket entry shown in abstract failed to meet the required criteria hereunder, the purported conviction was improperly relied on in proceeding to revoke operator's license under point system. *Baker v. Sullivan*, 191 Neb. 707, 217 N.W.2d 483 (1974).

The determinations required in this and companion sections are simple ministerial matters. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

Certified abstract is required to be sent to Director of Department of Motor Vehicles only where the accused is convicted or his bail is forfeited. *State ex rel. Line v. Kuhlman*, 167 Neb. 674, 94 N.W.2d 373 (1959).

This section applies to certification of conviction by county court. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

#### **60-497.02 Convictions; order of probation; abstract; transmittal required; open for inspection by public.**

An abstract of the judgment of conviction or order of probation shall be transmitted to the Director of Motor Vehicles and the National Crime Information Center upon conviction of any person of or placing such person on probation for manslaughter or other felony in the commission of which a vehicle was used. The director and the National Crime Information Center shall keep such conviction reports in their offices, and the reports shall be open to the inspection of any person during reasonable business hours.

**Source:** Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 477; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-795; Laws 1953, c. 219, § 8, p. 772; Laws 1957, c. 164, § 2, p. 579; Laws 1957, c. 366, § 16, p. 1256; Laws 1957, c. 165, § 2, p. 582; Laws 1969, c. 317, § 2, p. 1144; Laws 1973, LB 317, § 2; Laws 1973, LB 226, § 26; R.S.Supp.,1973, § 39-795; Laws 1991, LB 420, § 3; R.S.Supp.,1992, § 39-669.23; Laws 1993, LB 370, § 76.

The determinations required in this and companion sections are simple ministerial matters. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

This section applies to certification of conviction by justice of the peace. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

Certificate made by judge or clerk of county court is not required to be attested by seal. *Strasser v. Ress*, 165 Neb. 858, 87 N.W.2d 619 (1958).

### **60-497.03 Conviction reports; form of transmittal; revocation or suspension of license; director; duties.**

To enable the director punctually and economically to perform his or her ministerial duties in revoking or suspending operators' licenses and to insure uniformity in the keeping of the records of suspended operators' licenses and operators' licenses ordered revoked by courts of the state, the director shall authorize electronic transmission of abstract-of-conviction reports. The director shall prescribe the standard format of abstract-of-conviction reports.

In the administration of any section of the Motor Vehicle Operator's License Act, the powers and duties conferred upon the director or his or her subordinates or successors with respect to the revocation or suspension of any operator's license are ministerial in character. The director shall revoke operators' licenses only when positively directed to do so by the terms of the abstract of the judgment of conviction transmitted by the trial court except as otherwise provided in the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, or the Nebraska Rules of the Road.

**Source:** Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-796; Laws 1953, c. 219, § 9, p. 772; Laws 1957, c. 164, § 3, p. 580; Laws 1957, c. 366, § 17, p. 1256; Laws 1957, c. 165, § 3, p. 583; Laws 1969, c. 317, § 3, p. 1145; Laws 1972, LB 1032, § 248; Laws 1973, LB 226, § 27; R.S.Supp.,1972, § 39-796; Laws 1991, LB 420, § 4; R.S.Supp.,1992, § 39-669.24; Laws 1993, LB 370, § 77; Laws 1993, LB 575, § 16; Laws 1999, LB 704, § 12; Laws 2001, LB 38, § 19.

#### **Cross References**

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**Nebraska Rules of the Road**, see section 60-601.

A certified abstract for conviction report must include judgment of conviction to authorize revocation or suspension of motor vehicle operator's license. *Hyland v. State*, 194 Neb. 737, 235 N.W.2d 236 (1975).

The amount by which the speed limit was exceeded is a part of the information to be shown on the abstract for conviction report. *Melanson v. State*, 188 Neb. 446, 197 N.W.2d 401 (1972).

The determinations required in this and companion sections are simple ministerial matters. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

While the duties of the Director of Motor Vehicles are ministerial, he is required to relate the reports of convictions to the applicable statute violated. *Westenburg v. Weedlun*, 187 Neb. 679, 193 N.W.2d 566 (1972).

It is not necessary that abstract of state offense involved the use of a motor vehicle. *Lutjemeyer v. Dennis*, 186 Neb. 46, 180 N.W.2d 679 (1970).

Revocation of license under point system is a ministerial act. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

Duty to revoke license under point system law upon receipt of proof of convictions is ministerial. *Stewart v. Ress*, 164 Neb. 876, 83 N.W.2d 901 (1957).

### **60-497.04 Noncompliance; penalty.**

Failure, refusal, or neglect by any officer to comply with any of the provisions of sections 60-497.01 to 60-497.03 shall constitute misconduct in office and shall be grounds for his or her removal therefrom.

**Source:** Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 477; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-797; R.S.1943, (1988), § 39-669.25; Laws 1993, LB 370, § 78.

**60-498 Revocation; when mandatory.**

The director shall immediately revoke the operator's license of any person upon receiving a copy of judgment of such person's conviction of any of the following offenses when such conviction becomes final:

- (1) Manslaughter resulting from the operation of a motor vehicle;
- (2) Driving a motor vehicle while under the influence of alcoholic liquor or any drug as provided in city or village ordinances or in section 60-6,196. The period of revocation shall, in each case except for revocations pursuant to sections 60-498.01 to 60-498.04 and offenses specified in section 60-4,168, correspond with the period that is determined by the court;
- (3) Any felony in the commission of which a motor vehicle is used;
- (4) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (5) Perjury or making of a false affidavit or statement under oath to the director, examining officer, or other officer under the Motor Vehicle Operator's License Act or under any law relating to the ownership or operation of motor vehicles;
- (6) Conviction or forfeiture of bail, not vacated, upon three charges of reckless driving committed within a period of twelve months; or
- (7) Willful reckless driving as provided in city or village ordinances or as described in section 60-6,214.

**Source:** Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 472; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-424; Laws 1953, c. 214, § 7, p. 759; R.S.1943, (1988), § 60-424; Laws 1989, LB 285, § 48; Laws 1991, LB 420, § 8; Laws 1992, LB 291, § 15; Laws 1993, LB 370, § 79; Laws 2003, LB 209, § 3.

Conclusory notation of "D.U.I." provides no factual reason for an officer's decision to arrest a driver on suspicion of driving under the influence of alcohol instead of merely citing the driver for speeding when excessive speed was the initial reason for the stop. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in subsection (3) of section 60-498.01 in order to confer jurisdiction. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

**60-498.01 Driving under influence of alcohol; operator's license; confiscation and revocation; application for ignition interlock permit or 24/7 sobriety program permit; procedures; appeal; restrictions relating to ignition interlock permit or 24/7 sobriety program permit; prohibited acts relating to ignition interlock devices or 24/7 sobriety program permits; additional revocation period.**

(1) Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by driving with an excessive concentration of alcohol in his or her body or (b) by driving while under the influence of alcohol.

(2) If a person arrested as described in subsection (2) of section 60-6,197 refuses to submit to the chemical test of blood, breath, or urine required by section 60-6,197, the test shall not be given except as provided in section 60-6,210 for the purpose of medical treatment and the arresting peace officer,

as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic fifteen days after the date of arrest. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person refused to submit to the required test. The director may accept a sworn report submitted electronically.

(3) If a person arrested as described in subsection (2) of section 60-6,197 submits to the chemical test of blood or breath required by section 60-6,197, the test discloses the presence of alcohol in any of the concentrations specified in section 60-6,196, and the test results are available to the arresting peace officer while the arrested person is still in custody, the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic fifteen days after the date of arrest. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) 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. The director may accept a sworn report submitted electronically.

(4) On behalf of the director, the arresting peace officer submitting a sworn report under subsection (2) or (3) of this section shall serve notice of the revocation on the arrested person, and the revocation shall be effective fifteen days after the date of arrest. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The peace officer shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing or apply for an ignition interlock permit or a 24/7 sobriety program permit. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days after the person's arrest or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the information form, the application for an ignition interlock permit, and the notice of revocation and shall provide them to law enforcement agencies.

If the person has an operator's license, the arresting peace officer shall take possession of the license and issue a temporary operator's license valid for fifteen days. The arresting peace officer shall forward the operator's license to the department along with the sworn report made under subsection (2) or (3) of this section.

(5)(a) If the results of a chemical test indicate the presence of alcohol in a concentration specified in section 60-6,196, the results are not available to the arresting peace officer while the arrested person is in custody, and the notice of revocation has not been served as required by subsection (4) of this section, the peace officer shall forward to the director a sworn report containing the information prescribed by subsection (3) of this section within ten days after receipt of the results of the chemical test. If the sworn report is not received

within ten days, the revocation shall not take effect. The director may accept a sworn report submitted electronically.

(b) Upon receipt of the report, the director shall serve the notice of revocation on the arrested person by mail to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The director shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing and an application for an ignition interlock permit. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days after the mailing of the notice of revocation or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the ignition interlock permit application and the notice of revocation. The revocation shall be effective fifteen days after the date of mailing.

(c) If the records of the director indicate that the arrested person possesses an operator's license, the director shall include with the notice of revocation a temporary operator's license which expires fifteen days after the date of mailing. Any arrested person who desires an administrative license revocation hearing and has been served a notice of revocation pursuant to this subsection shall return his or her operator's license with the petition requesting the hearing. If the operator's license is not included with the petition requesting the hearing, the director shall deny the petition.

(6)(a) An arrested person's operator's license confiscated pursuant to subsection (4) of this section shall be automatically revoked upon the expiration of fifteen days after the date of arrest, and the petition requesting the hearing shall be completed and delivered to the department or postmarked within ten days after the person's arrest. An arrested person's operator's license confiscated pursuant to subsection (5) of this section shall be automatically revoked upon the expiration of fifteen days after the date of mailing of the notice of revocation by the director, and the arrested person shall postmark or return to the director a petition within ten days after the mailing of the notice of revocation if the arrested person desires an administrative license revocation hearing. The petition shall be in writing and shall state the grounds on which the person is relying to prevent the revocation from becoming effective. The hearing and any prehearing conference may be conducted in person or by telephone, television, or other electronic means at the discretion of the director, and all parties may participate by such means at the discretion of the director.

(b) The director shall conduct the hearing within twenty days after a petition is received by the director. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by mail postmarked at least seven days prior to the hearing date. The filing of the petition shall not prevent the automatic revocation of the petitioner's operator's license at the expiration of the fifteen-day period. A continuance of the hearing to a date beyond the expiration of the temporary operator's license shall stay the expiration of the temporary license when the request for continuance is made by the director.

(c) At hearing the issues under dispute shall be limited to:

(i) In the case of a refusal to submit to a chemical test of blood, breath, or urine:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Did the person refuse to submit to or fail to complete a chemical test after being requested to do so by the peace officer; or

(ii) If the chemical test discloses the presence of alcohol in a concentration specified in section 60-6,196:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Was the person operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection (1) of section 60-6,196.

(7)(a) Any arrested person who submits an application for an ignition interlock permit in lieu of a petition for an administrative license revocation hearing regarding the revocation of his or her operator's license pursuant to this section shall complete the application for an ignition interlock permit in which such person acknowledges that he or she understands that he or she will have his or her license administratively revoked pursuant to this section, that he or she waives his or her right to a hearing to contest the revocation, and that he or she understands that he or she is required to have an ignition interlock permit in order to operate a motor vehicle for the period of the revocation and shall include sufficient evidence that an ignition interlock device is installed on one or more vehicles that will be operated by the arrested person. Upon the arrested person's completion of the ignition interlock permit application process, the department shall issue the person an ignition interlock permit, subject to any applicable requirements and any applicable no-drive period if the person is otherwise eligible.

(b) An arrested person who is issued an ignition interlock permit pursuant to this section or a 24/7 sobriety program permit under the 24/7 Sobriety Program Act as a condition of bail shall receive day-for-day credit for the period he or she has a valid ignition interlock permit or valid 24/7 sobriety program permit against the license revocation period imposed by the court arising from the same incident.

(c) If a person files a completed application for an ignition interlock permit, the person waives his or her right to contest the revocation of his or her operator's license.

(d) A person subject to administrative license revocation under sections 60-498.01 to 60-498.04 shall be eligible for a 24/7 sobriety program permit.

(8) Any person who has not petitioned for an administrative license revocation hearing and is subject to an administrative license revocation may immediately apply for an ignition interlock permit or a 24/7 sobriety program permit under the 24/7 Sobriety Program Act to use during the applicable period of revocation set forth in section 60-498.02, subject to the following additional restrictions:

(a) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 and has no prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued:

(i) The ignition interlock permit will be immediately available fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit; or

(ii) If such person is enrolled in a 24/7 sobriety program under the 24/7 Sobriety Program Act and has not violated any program conditions for drugs or alcohol after thirty consecutive days of testing, such person may apply for a 24/7 sobriety program permit as a condition of bail under the 24/7 Sobriety Program Act. Such permit shall expire at the same time as the later of any administrative license revocation being served as determined by section 60-498.02;

(b) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 and has one or more prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued:

(i) The ignition interlock permit will be available beginning fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person plus forty-five additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit; or

(ii) If such person is enrolled in the 24/7 sobriety program under the 24/7 Sobriety Program Act and has not violated any program conditions for drugs or alcohol after thirty consecutive days of testing, such person may apply for a 24/7 sobriety program permit as a condition of bail under the 24/7 Sobriety Program Act any time after the expiration of the forty-five day no driving period referred to in subdivision (8)(b)(i) of this section;

(c) If such person refused to submit to a chemical test of blood, breath, or urine as required by section 60-6,197:

(i) The ignition interlock permit will be available beginning fifteen days after the date of arrest plus ninety additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit; or

(ii) If such person is enrolled in the 24/7 sobriety program under the 24/7 Sobriety Program Act and has not violated any program conditions for drugs or alcohol after thirty consecutive days of testing, the person may apply for a 24/7 sobriety program permit as a condition of bond under the 24/7 Sobriety Program Act any time after the expiration of the ninety-day no driving period referred to in subdivision (8)(c)(i) of this section. Such permit shall expire at the same time as the later of any administrative license revocation being served as determined by section 60-498.02; and

(d) Any person who petitions for an administrative license revocation hearing shall not be eligible for an ignition interlock permit or a 24/7 sobriety program



permit unless ordered by the court at the time of sentencing for the related criminal proceeding.

(9) The director shall adopt and promulgate rules and regulations to govern the conduct of the administrative license revocation hearing and insure that the hearing will proceed in an orderly manner. The director may appoint a hearing officer to preside at the hearing, administer oaths, examine witnesses, take testimony, and report to the director. Any motion for discovery filed by the petitioner shall entitle the prosecutor to receive full statutory discovery from the petitioner upon a prosecutor's request to the relevant court pursuant to section 29-1912 in any criminal proceeding arising from the same arrest. A copy of the motion for discovery shall be filed with the department and a copy provided to the prosecutor in the jurisdiction in which the petitioner was arrested. Incomplete discovery shall not stay the hearing unless the petitioner requests a continuance. All proceedings before the hearing officer shall be recorded. Upon receipt of the arresting peace officer's sworn report, the director's order of revocation has prima facie validity and it becomes the petitioner's burden to establish by a preponderance of the evidence grounds upon which the operator's license revocation should not take effect. The director shall make a determination of the issue within seven days after the conclusion of the hearing. A person whose operator's license is revoked following a hearing requested pursuant to this section may appeal the order of revocation as provided in section 60-498.04.

(10) Any person who tampers with or circumvents an ignition interlock device installed pursuant to sections 60-498.01 to 60-498.04 or who operates a motor vehicle not equipped with a functioning ignition interlock device required pursuant to such sections or otherwise is in violation of the purposes for operation indicated on the ignition interlock permit under such sections shall, in addition to any possible criminal charges, have his or her revocation period and ignition interlock permit extended for six months beyond the end of the original revocation period.

(11) A person under the age of eighteen years who holds any license or permit issued under the Motor Vehicle Operator's License Act and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit or a 24/7 sobriety program permit.

**Source:** Laws 1972, LB 1095, § 5; R.S.Supp.,1972, § 39-727.16; Laws 1992, LB 872, § 4; Laws 1992, LB 291, § 9; R.S.Supp.,1992, § 39-669.15; Laws 1993, LB 370, § 300; Laws 1996, LB 939, § 3; Laws 1998, LB 309, § 15; Laws 2001, LB 38, § 51; R.S.Supp.,2002, § 60-6,205; Laws 2003, LB 209, § 4; Laws 2004, LB 208, § 5; Laws 2011, LB667, § 24; Laws 2012, LB751, § 20; Laws 2019, LB269, § 2; Laws 2021, LB271, § 9.  
Operative date July 1, 2022.

#### Cross References

24/7 Sobriety Program Act, see section 60-701.

1. Constitutionality
2. Refusal to submit to test
3. Rules and regulations
4. Procedure
5. Venue

**6. Sworn report**  
**7. Miscellaneous**

**1. Constitutionality**

The administrative license revocation provisions pertaining to motorists who refuse to submit to chemical testing do not violate the due process or equal protection rights of those motorists by treating them differently than motorists who submit to, but fail, such testing. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

The due process rights of a motorist who refuses to submit to chemical testing are not violated by this section even though the statutory scheme does not operate to reinstate the motorist's administratively revoked driver's license if he or she is acquitted of the criminal refusal charge. *Kenley v. Neth*, 271 Neb. 402, 712 N.W.2d 251 (2006).

This section does not violate the Equal Protection Clauses of the federal and state Constitutions by treating motorists who refuse to submit to chemical testing differently than motorists who submit to, but fail, such testing. *Kenley v. Neth*, 271 Neb. 402, 712 N.W.2d 251 (2006).

Although this section does not allow a motorist to challenge the validity of the initial traffic stop, it does not violate due process because the Fourth Amendment exclusionary rule is not applicable in civil license revocation proceedings. *Chase v. Neth*, 269 Neb. 882, 697 N.W.2d 675 (2005).

This section does not create an unconstitutional classification between those who submit to urine tests and those who submit to blood and breath tests pursuant to this section. *Kalisek v. Abramson*, 257 Neb. 517, 599 N.W.2d 834 (1999).

Administrative license revocation statutes are reviewed using the rational relationship standard of review. The administrative license revocation statutes do not violate equal protection, nor do they constitute cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 256 Neb. 782, 593 N.W.2d 295 (1999).

The Legislature intended administrative license revocation to be a civil sanction, and the sanction is not so punitive in purpose or effect as to negate the Legislature's intent; therefore, administrative license revocation for failure to submit to a chemical test does not violate double jeopardy. *State v. Howell*, 254 Neb. 247, 575 N.W.2d 861 (1998).

The purpose of administrative license revocation is to protect the public from the health and safety hazards of driving and to deter drunk driving. Criminal prosecution and punishment following a hearing under this section do not violate the Double Jeopardy Clause of the U.S. Constitution. *State v. Young*, 249 Neb. 539, 544 N.W.2d 808 (1996).

**2. Refusal to submit to test**

The sworn report of the arresting officer must indicate (1) that the person was arrested as described in section 60-6,197(2) and the reasons for the arrest, (2) that the person was requested to submit to the required test, and (3) that the person refused to submit to the required test. *Nothnagel v. Neth*, 276 Neb. 95, 752 N.W.2d 149 (2008).

Failure to produce an adequate breath sample constitutes a refusal to submit to breath test. *Porter v. Jensen*, 223 Neb. 438, 390 N.W.2d 511 (1986).

A motorist's subsequent offer to take a blood alcohol test previously refused does not nullify or cure such driver's initial refusal to take the test requested by the arresting officer. *Hoyle v. Peterson*, 216 Neb. 253, 343 N.W.2d 730 (1984).

Adoption of this section did not change rule that refusal to submit to test may be shown in prosecution for driving while under influence of intoxicating liquor. *State v. Meints*, 189 Neb. 264, 202 N.W.2d 202 (1972).

**3. Rules and regulations**

When the applicable rules and regulations are not strictly complied with, the Department of Motor Vehicles cannot obtain the benefit of a presumption that all facts recited in the sworn

report are true. *Morrissey v. Department of Motor Vehicles*, 264 Neb. 456, 647 N.W.2d 644 (2002).

Due process is denied where the rules and regulations governing the administrative license revocation procedure were not on file with the Secretary of State for at least 5 days at the time of the arrest. *Dannehl v. Department of Motor Vehicles*, 3 Neb. App. 492, 529 N.W.2d 100 (1995).

**4. Procedure**

Although this section limits the issues under dispute, it does not prohibit evidence pertinent to the issue of enhancement after those issues have been resolved. *Stenger v. Department of Motor Vehicles*, 274 Neb. 819, 743 N.W.2d 758 (2008).

The failure to hold a hearing within the time provided in subsection (6)(b) of this section does not invalidate the administrative license revocation proceeding unless the motorist can show that he or she was prejudiced by the delay. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

A report that does not contain the affirmation of an "arresting peace officer" that the facts recited in the report are true is not a proper "sworn report" as required by this section. *Arndt v. Department of Motor Vehicles*, 270 Neb. 172, 699 N.W.2d 39 (2005).

An arresting officer's sworn report must, at a minimum, contain the information specified in this section in order to confer jurisdiction upon the Department of Motor Vehicles to revoke an operator's license. *Hahn v. Neth*, 270 Neb. 164, 699 N.W.2d 32 (2005).

Pursuant to subsection (2) of this section, the administrative license revocation process must be based on a valid arrest, because the sworn report which triggers the administrative license revocation must be prepared by an "arresting peace officer" who has "validly arrested" a driver. *Young v. Neth*, 263 Neb. 20, 637 N.W.2d 884 (2002).

The burden is upon the state to make a prima facie case for revocation before the director. *Mackey v. Director of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

Pursuant to subsection (6)(a) of this section, the arresting officer may participate in the hearing and any prehearing conference by telephone, television, or other electronic means at the discretion of the director. *Penry v. Neth*, 20 Neb. App. 276, 823 N.W.2d 243 (2012).

When the motorist made no showing in support of the need for a continuance and refused to request one himself, it was not a violation of his due process rights for the Department of Motor Vehicles hearing officer not to grant a continuance on her own motion so that the motorist could obtain a stay of revocation under subdivision (6)(b) of this section. *Kriz v. Neth*, 19 Neb. App. 819, 811 N.W.2d 739 (2012).

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

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

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).

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

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

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

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

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

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

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

When an arrested driver is released before the results of blood alcohol content testing are known to the arresting officer, then under subsection (5)(a) of this section (60-6,205 (Reissue 1993)) the arresting officer is "unable to serve" notice, and the statutory provision allowing service by certified mail by the Department of Motor Vehicles becomes operative. *Kuebler v. Abramson*, 4 Neb. App. 420, 544 N.W.2d 513 (1996).

## 5. Venue

For purposes of subsection (6)(a) of this section, an administrative license revocation hearing is held at the location of the hearing officer. *Gracey v. Zwonechek*, 263 Neb. 796, 643 N.W.2d 381 (2002).

Pursuant to subsection (6)(a) of this section, generalized objections directed to the method by which a license revocation hearing was being held are not objections to venue. *Davis v. Wimes*, 263 Neb. 504, 641 N.W.2d 37 (2002).

Subsection (6)(a) of this section is a venue statute. *Reiter v. Wimes*, 263 Neb. 277, 640 N.W.2d 19 (2002).

Subsection (6)(a) of this section, establishing the location for administrative license revocation hearings, is a venue statute. A telephonic hearing under the Administrative Procedure Act pertaining to license revocation is subject to the terms of subsection (6)(a) of this section. *Muir v. Nebraska Dept. of Motor Vehicles*, 260 Neb. 450, 618 N.W.2d 444 (2000).

## 6. Sworn report

A sworn report does not need to state or support an inference that the individual arrested drove or controlled a motor vehicle on property open to public access. *Hoppens v. Nebraska Dept. of Motor Vehicles*, 288 Neb. 857, 852 N.W.2d 331 (2014).

An arresting officer's sworn report triggers the administrative license revocation process by establishing a prima facie basis for revocation. The sworn report must, at a minimum, contain the information specified in this section in order to confer jurisdiction. *Murray v. Neth*, 279 Neb. 947, 783 N.W.2d 424 (2010).

The Department of Motor Vehicles has the power, in an administrative license revocation proceeding, to evaluate the jurisdictional averments in a sworn report and, if necessary, solicit a sworn addendum to that report if necessary to establish jurisdiction to proceed. *Murray v. Neth*, 279 Neb. 947, 783 N.W.2d 424 (2010).

An acknowledgment on a sworn report which does not set forth the name of the individual making the acknowledgment,

i.e., the arresting officer, does not substantially comply with the requirements of Nebraska law. *Johnson v. Neth*, 276 Neb. 886, 758 N.W.2d 395 (2008).

Sworn reports in administrative license revocation proceedings are, by definition, affidavits. *Johnson v. Neth*, 276 Neb. 886, 758 N.W.2d 395 (2008).

The arresting officer's sworn report triggers the administrative license revocation process by establishing a prima facie basis for revocation. *Nothnagel v. Neth*, 276 Neb. 95, 752 N.W.2d 149 (2008).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in subsection (3) of this section in order to confer jurisdiction. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007); *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in the applicable statute in order to confer jurisdiction. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007); *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

A sworn statement containing the recitations required by this section establishes a prima facie case under the provisions of the administrative license revocation statutes. *McPherrin v. Conrad*, 248 Neb. 561, 537 N.W.2d 498 (1995).

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).

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).

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 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).

Pursuant to subsection (2) of this section, the failure of the notary to include the expiration date of his or her commission on the sworn report does not render such sworn report invalid because the presence of a notarial seal and the notary's signa-

ture serves as presumptive evidence of the performance of the notary's duty. *Valeriano-Cruz v. Neth*, 14 Neb. App. 855, 716 N.W.2d 765 (2006).

Once the arresting officer's sworn report is received, the case for revocation has prima facie validity and it becomes the petitioner's burden to establish by a preponderance of the evidence grounds upon which the operator's license revocation should not take effect. *Scott v. State*, 13 Neb. App. 867, 703 N.W.2d 266 (2005).

Although this section requires the "sworn report" required by subsection (2) of this section to include the "reasons for [the] arrest," an arresting officer need not specifically delineate on the sworn report all of the information contained on an attached probable cause form, so long as the sworn report provides adequate notice that one is being accused of driving under the influence and/or failure of a chemical test. *Taylor v. Wimes*, 10 Neb. App. 432, 632 N.W.2d 366 (2001).

#### 7. Miscellaneous

Under subsection (6)(c)(i)(A) of this section, a peace officer must have probable cause prior to revoking a driver's license for refusal to submit to a chemical test. *State v. Howell*, 254 Neb. 247, 575 N.W.2d 861 (1998).

Pursuant to subsection (3) of this section, after January 1, 1993, a person who agrees to submit to a chemical test and fails it is subject to automatic administrative license revocation. *Smith v. State*, 248 Neb. 360, 535 N.W.2d 694 (1995).

The oath to an affidavit is not required to be administered with any particular ceremony, but the affiant must perform some corporal act whereby he consciously takes upon himself the obligation of an oath. *Moore v. Peterson*, 218 Neb. 615, 358 N.W.2d 193 (1984).

This section simply forestalls a forcible taking of a specimen. *Wiseman v. Sullivan*, 190 Neb. 724, 211 N.W.2d 906 (1973).

This section is pari materia with section 39-727.03 (transferred to section 60-6,197), and other sections mentioned in opinion. *Stevenson v. Sullivan*, 190 Neb. 295, 207 N.W.2d 680 (1973).

The nonpunitive purpose of this section is to protect the public health and safety by revoking the license of persons who drive while under the influence of alcohol, because they have shown themselves to be a safety hazard. *State v. Moody*, 26 Neb. App. 328, 918 N.W.2d 26 (2018).

This section has an alternative, nonpunitive purpose of the protection of the public health and safety by revoking the license of persons who drive while under the influence of alcohol, because they have shown themselves to be a safety hazard. Any deterrent purpose is merely secondary to this section's stated, nonpunitive purpose. *State v. Moody*, 26 Neb. App. 328, 918 N.W.2d 26 (2018).

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).

### **60-498.02 Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; ignition interlock permit; restriction on operation of motor vehicle.**

(1) At the expiration of fifteen days after the date of arrest as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section 60-498.01 the director finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of one hundred eighty days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license shall not be issued to such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

(2) A person operating a motor vehicle under an ignition interlock permit issued pursuant to sections 60-498.01 to 60-498.04 shall only operate a motor vehicle equipped with an ignition interlock device. All permits issued pursuant to such sections shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(3) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

(4)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) The prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section or dismissed a filed complaint alleging a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section prior to trial;

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or a city or village ordinance enacted in conformance with such section; or

(iii) In the criminal action on the charge of a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section arising from the same incident, the court held one of the following:

(A) The peace officer did not have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; or

(B) The person was not operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a criminal charge is filed or refiled for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section pursuant to an arrest for which all administrative license revocation proceedings were dismissed under this subsection, the director, upon notification or discovery, may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing or refiled of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

**Source:** Laws 1972, LB 1095, § 6; R.S.Supp.,1972, § 39-727.17; Laws 1974, LB 679, § 3; Laws 1982, LB 568, § 7; Laws 1986, LB 153, § 8; Laws 1988, LB 377, § 3; Laws 1992, LB 291, § 11; R.S.Supp.,1992, § 39-669.16; Laws 1993, LB 370, § 301; Laws 1993, LB 491, § 1; Laws 1993, LB 564, § 12; Laws 1998, LB 309, § 16; Laws 2001, LB 38, § 52; R.S.Supp.,2002, § 60-6,206; Laws 2003, LB 209, § 5; Laws 2004, LB 208, § 6; Laws 2008, LB736, § 3; Laws 2009, LB497, § 2; Laws 2010, LB924, § 1; Laws 2011, LB667, § 25; Laws 2011, LB675, § 2; Laws 2012, LB751, § 21; Laws 2013, LB158, § 1; Laws 2021, LB302, § 1.  
Effective date August 28, 2021.

When the Department of Motor Vehicles provided the motorist a copy of his driver abstract before the revocation hearing and an opportunity to challenge the accuracy of his driver abstract at the revocation hearing, the requirements of due process were met. *Stenger v. Department of Motor Vehicles*, 274 Neb. 819, 743 N.W.2d 758 (2008).

The administrative license revocation provisions pertaining to motorists who refuse to submit to chemical testing do not violate the due process or equal protection rights of those motorists by treating them differently than motorists who submit to, but fail, such testing. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

Administrative revocation of a driver's license under this section is a civil sanction and does not constitute punishment for purposes of double jeopardy. *State v. Isham*, 261 Neb. 690, 625 N.W.2d 511 (2001).

Administrative license revocation statutes are reviewed using the rational relationship standard of review. The administrative license revocation statutes do not violate equal protection, nor do they constitute cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 256 Neb. 782, 593 N.W.2d 295 (1999).

The proscription that there can be no revocation of one's driver's license and operating privileges if the refusal to submit to a chemical test is reasonable under the circumstances contained in this section (formerly section 39-669.16 (Reissue 1988)), relates only to administrative license revocations by the Director of Motor Vehicles. In a criminal proceeding, however, the inquiry centers on the existence of reasonable grounds for the arresting officer to believe that an operator was driving

while under the influence of alcohol. *State v. Boyd*, 242 Neb. 144, 493 N.W.2d 344 (1992).

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).

Pursuant to subsection (4) of this section, a Department of Motor Vehicles regulation cannot, as a prerequisite to dismissing an administrative license revocation proceeding, require a prosecuting attorney to provide one of four particular reasons for failing to file a criminal driving under the influence of alcohol charge, as such a requirement modifies, alters, and restricts the provisions of this section. *Dozler v. Conrad*, 3 Neb. App. 735, 532 N.W.2d 42 (1995).

**60-498.03 Operator's license revocation decision; notice; contents.**

(1) The director shall reduce the decision revoking an operator's license under sections 60-498.01 to 60-498.04 to writing, and the director shall notify the person in writing of the revocation. The notice shall set forth the period of revocation and be served by mailing it to such person to the address provided to the director at the administrative license revocation hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not revoke the operator's license, the director shall immediately notify the person in writing of the decision. The notice shall set forth the time and place the person may obtain his or her license. The notice shall be mailed as provided in subsection (1) of this section. No reinstatement fee shall be charged for return of the confiscated operator's license pursuant to this subsection.

**Source:** Laws 1972, LB 1095, § 7; R.S.Supp.,1972, § 39-727.18; Laws 1992, LB 291, § 12; R.S.Supp.,1992, § 39-669.17; Laws 1993, LB 370, § 302; Laws 2001, LB 38, § 53; R.S.Supp.,2002, § 60-6,207; Laws 2003, LB 209, § 6; Laws 2011, LB667, § 26.

Administrative license revocation statutes are reviewed using the rational relationship standard of review. The administrative license revocation statutes do not violate equal protection, nor do they constitute cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 256 Neb. 782, 593 N.W.2d 295 (1999).

A refusal to submit to a chemical test for alcohol occurs when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood that

he was asked to submit to a test and manifested an unwillingness to do so. *Wohlgemuth v. Pearson*, 204 Neb. 687, 285 N.W.2d 102 (1979).

A preliminary refusal followed by a consent to submit to a test for blood alcohol content does not furnish a basis for imposition of the sanction prescribed by the statute if a test was in fact performed and the state was not prejudiced by the delay in performing the test. *Sedlacek v. Pearson*, 204 Neb. 625, 284 N.W.2d 556 (1979).

**60-498.04 License revocation; appeal; notice of judgment.**

Any person who feels himself or herself aggrieved because of the revocation of his or her operator's license under sections 60-498.01 to 60-498.04 may appeal therefrom to the district court of the county where the alleged events occurred for which he or she was arrested, and the appeal shall be in accordance with section 84-917. The district court shall allow any party to an appeal to appear by telephone at any proceeding before the court for purposes

of the appeal. Such appeal shall not suspend the order of revocation. The court shall provide notice of the final judgment to the department.

**Source:** Laws 1972, LB 1095, § 8; R.S.Supp.,1972, § 39-727.19; Laws 1988, LB 352, § 31; R.S.1943, (1988), § 39-669.18; Laws 1993, LB 370, § 303; Laws 1998, LB 309, § 17; R.S.1943, (1998), § 60-6,208; Laws 2003, LB 209, § 7; Laws 2011, LB667, § 27.

Neither this section nor subsection (2)(a) of section 84-917 provides that its jurisdictional provisions are exclusive. *Reiter v. Wimes*, 263 Neb. 277, 640 N.W.2d 19 (2002).

Administrative license revocation statutes are reviewed using the rational relationship standard of review. The administrative license revocation statutes do not violate equal protection, nor do they constitute cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 256 Neb. 782, 593 N.W.2d 295 (1999).

The venue requirements of this section governing the right to appeal are mandatory and must be complied with in order for the appellate court to acquire jurisdiction. An appeal from an order of the Director of Motor Vehicles revoking an operator's license for refusing to take a blood, breath, or urine test must be filed in the district court of the county in which the alleged

events occurred for which the operator was arrested. *Jackson v. Jensen*, 225 Neb. 671, 407 N.W.2d 758 (1987).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. *Mackey v. Director of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

On appeal from order of revocation of a motor vehicle operator's license under the implied consent law, review is de novo as in equity. *Wiseman v. Sullivan*, 190 Neb. 724, 211 N.W.2d 906 (1973).

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).

#### **60-499 Revocation; when authorized.**

The director may revoke the operator's license of a person upon receipt of a copy of a judgment of conviction from the trial magistrate or judge which states that the licensee:

- (1) Has committed an offense for which mandatory revocation is required upon conviction as set forth in section 60-498;
- (2) Has been involved as a driver in an accident resulting in the death or personal injury of another or in serious property damage;
- (3) Is a habitually reckless or negligent driver of a motor vehicle;
- (4) Is a habitual violator of the traffic laws;
- (5) Is incompetent to drive a motor vehicle;
- (6) Has permitted an unlawful or fraudulent use of such license;
- (7) Was not entitled to the issuance of the license;
- (8) Failed to give the required or correct information in his or her application;
- (9) Committed fraud in his or her application process; or
- (10) Has, as a nonresident, suffered revocation or suspension of his or her operator's license or of his or her driving privilege by the trial court and the director and has, during the period of revocation or suspension, violated the terms of that revocation or suspension by exercising the driving privilege under a new operator's license fraudulently obtained or otherwise.

**Source:** Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 473; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-425; R.S.1943, (1988), § 60-425; Laws 1989, LB 285, § 49; Laws 1991, LB 420, § 9; Laws 1999, LB 704, § 13; Laws 2001, LB 38, § 20.

#### **60-499.01 Revocation; reinstatement fee.**

Whenever an operator's license is revoked under the Motor Vehicle Operator's License Act, the licensee shall pay a reinstatement fee to the Department of Motor Vehicles to reinstate his or her eligibility for a license in addition to

complying with the other provisions of the act. The reinstatement fee shall be one hundred twenty-five dollars. The department shall remit the fees to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2001, LB 38, § 11.

**60-4,100 Suspension; when authorized; citation; lack of financial ability to pay; hearing; determination; court or magistrate; powers; order; operate as release.**

(1) Any resident of this state who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction outside this state pursuant to the Nonresident Violator Compact of 1977 or in any jurisdiction inside this state shall be subject to having his or her operator's license suspended pursuant to this section.

(2) The court having jurisdiction over the offense for which the citation has been issued shall notify the director of a resident's violation of a promise to comply with the terms of the citation after thirty working days have elapsed from the date of the failure to comply, unless within such thirty working days the resident appears before the clerk of the county court having jurisdiction over the offense to request a hearing pursuant to subsection (3) of this section to establish that such resident lacks the financial ability to pay the citation.

(3) A hearing requested under subsection (2) of this section shall be set before the court or magistrate on the first regularly scheduled court date following the request. At the hearing, the resident shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay the citation. Following the hearing, the court or magistrate shall determine the resident's financial ability to pay the citation, including his or her financial ability to pay in installments.

(4)(a) Except as provided in subdivision (4)(c) of this section, if the court or magistrate determines under subsection (3) of this section that the resident is financially able to pay the citation and the resident refuses to pay, the court or magistrate shall either:

(i) Notify the director of the resident's violation of a promise to comply with the terms of the citation; or

(ii) Postpone the hearing for a period of no more than one month during which period the court or magistrate may order the resident to complete such hours of community service as the court or magistrate deems appropriate, subject to a total limit of twenty hours. At the end of such period, if the resident has completed such community service to the satisfaction of the court or magistrate, the court or magistrate shall enter an order pursuant to subsection (5) of this section discharging the resident of the obligation to pay such citation and shall notify the director. If the resident has not completed such community service to the satisfaction of the court or magistrate, the court or magistrate shall notify the director of the resident's violation of a promise to comply with the terms of the citation. A hearing may only be postponed once under this subdivision.



(b) If the court or magistrate determines under subsection (3) of this section that the resident is financially unable to pay the citation, the court or magistrate shall either:

(i) Enter an order pursuant to subsection (5) of this section discharging the resident of the obligation to pay such citation;

(ii) Postpone the hearing for a period of no more than one month during which period the court or magistrate may order the resident to complete such hours of community service as the court or magistrate deems appropriate, subject to a total limit of twenty hours. At the end of such period, if the resident has completed such community service to the satisfaction of the court or magistrate, the court or magistrate shall enter an order pursuant to subsection (5) of this section discharging the resident of the obligation to pay such citation and shall notify the director. If the resident has not completed such community service to the satisfaction of the court or magistrate, the court or magistrate shall notify the director of the resident's violation of a promise to comply with the terms of the citation. A hearing may only be postponed once under this subdivision.

(c) If the court or magistrate determines under subsection (3) of this section that the resident is financially able to pay in installments and the resident agrees to make such payments, the court or magistrate shall make arrangements suitable to the court or magistrate and to the resident by which the resident may pay in installments. The court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. If the resident fails to pay an installment, the court or magistrate shall notify the director of the resident's violation of a promise to comply with the terms of the citation unless the resident requests a hearing from the clerk of the county court on or before ten working days after such installment was due. At the hearing, the resident shall show good cause for such failure, including financial inability to pay. If, following such hearing, the court or magistrate finds:

(i) That the resident has not demonstrated good cause for such failure, the court or magistrate shall either notify the director of the resident's violation of a promise to comply with the terms of the citation or postpone the hearing and order community service pursuant to subdivision (4)(a)(ii) of this section;

(ii) That the resident remains financially able to pay but has demonstrated good cause for such missed installment, the court or magistrate shall make any necessary modifications to the order specifying the terms of the installment payments; or

(iii) That the resident has become financially unable to pay, the court or magistrate shall enter an order pursuant to subsection (5) of this section discharging the resident of the obligation to pay such citation and shall notify the director.

(5) An order discharging the resident of the obligation to pay a traffic citation shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such payment obligation.

(6) Upon notice to the director that a resident has violated a promise to comply with the terms of a traffic citation as provided in this section, the director shall send written notice to such resident by regular United States mail to the resident's last-known mailing address or, if such address is unknown, to the last-known residence address of such resident as shown by the records of

the department. Such notice shall state that such resident has twenty working days after the date of the notice to show the director that the resident has complied with the terms of such traffic citation. If the resident fails to show the director that he or she has complied with the terms of such traffic citation on or before twenty working days after the date of the notice, the director shall summarily suspend the operator's license and issue an order. The order shall be sent by regular United States mail to the resident's last-known mailing address as shown by the records of the department. The suspension shall continue until the resident has furnished the director with satisfactory evidence of compliance with the terms of the citation.

(7) The reinstatement fee required under section 60-4,100.01 shall be waived if five years have passed since issuance of the license suspension order under this section.

(8) The performance or completion of an order to complete community service under this section may be supervised or confirmed by a community correctional facility or program or another similar entity as ordered by the court or magistrate.

(9) For purposes of this section:

(a) Agency means any public or governmental unit, institution, division, or agency or any private nonprofit organization which provides services intended to enhance the social welfare or general well-being of the community, which agrees to accept community service from residents under this section and to supervise and report the progress of such community service to the court or magistrate;

(b) Community correctional facility or program has the same meaning as in section 47-621; and

(c) Community service means uncompensated labor for an agency to be performed by a resident when the resident is not working or attending school.

**Source:** Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 472; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-426; Laws 1981, LB 344, § 2; Laws 1986, LB 153, § 10; R.S.1943, (1988), § 60-426; Laws 1989, LB 285, § 50; Laws 1991, LB 420, § 10; Laws 1993, LB 491, § 11; Laws 1997, LB 10, § 1; Laws 2001, LB 38, § 21; Laws 2012, LB751, § 22; Laws 2017, LB259, § 13.

**Cross References**

**Nonresident Violator Compact of 1977**, see section 1-119, Appendix, Nebraska Revised Statutes, Volume 2A.

**60-4,100.01 Suspension; reinstatement fee.**

Whenever an operator's license is suspended under the Motor Vehicle Operator's License Act, the licensee shall pay a reinstatement fee to the Department of Motor Vehicles as a prerequisite to reinstatement of such license in addition to complying with the other provisions of the act. Upon expiration of the applicable period of suspension and payment of the reinstatement fee, the operator's license shall be returned unless it is no longer valid. The reinstatement fee shall be fifty dollars. The department shall remit the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2001, LB 38, § 12.

**60-4,101 Repealed. Laws 1999, LB 704, § 53.****60-4,102 Nonresident; driving privilege; revocation, suspension, or impoundment.**

The privilege of driving a motor vehicle on the highways of this state given to a nonresident shall be subject to suspension or revocation by the director or revocation or impoundment by the trial magistrate or judge in like manner and for like cause as an operator's license may be suspended, revoked, or impounded. The director may, upon receiving a copy of a judgment of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, transmit a certified copy of such judgment of conviction to the motor vehicle administrator in the state wherein the person so convicted is a resident.

**Source:** Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 472; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-422; R.S.1943, (1988), § 60-422; Laws 1989, LB 285, § 52; Laws 1991, LB 420, § 12; Laws 2001, LB 38, § 22.

Defendant's analysis of this section failed to take into account other sections of statute. *State v. Smith*, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-4,103 Nonresident; violating terms of order; effect.**

Any nonresident who violates the terms of the court or administrative order by which his or her operator's license or driving privilege was revoked, suspended, or impounded shall be subject to section 60-4,108.

**Source:** Laws 1941, c. 124, § 4, p. 473; C.S.Supp.,1941, § 60-428; R.S. 1943, § 60-423; Laws 1959, c. 293, § 1, p. 1098; Laws 1977, LB 39, § 79; R.S.1943, (1988), § 60-423; Laws 1989, LB 285, § 53; Laws 2001, LB 38, § 23.

Defendant's analysis of this section failed to take into account other sections of statute. *State v. Smith*, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-4,104 Revocation or suspension; order of director; prima facie evidence.**

A copy of the order of the director suspending or revoking any operator's license or the privilege of operating a motor vehicle, duly certified by the director and bearing the seal of the Department of Motor Vehicles, shall be admissible in evidence without further proof and shall be prima facie evidence of the facts therein stated in any proceeding, civil or criminal, in which such suspension or revocation is an issuable fact.

**Source:** Laws 1961, c. 318, § 1, p. 1018; R.S.1943, (1988), § 60-418.01; Laws 1989, LB 285, § 54.

An order of the Director of Motor Vehicles revoking or suspending an operator's license is prima facie evidence of the facts therein, shifting the burden to the driver to rebut the correctness of that order. *Delgado v. Abramson*, 254 Neb. 606, 578 N.W.2d 833 (1998).

Copy of order of suspension certified in name of director by properly designated subordinate is admissible in evidence. *State v. Applegarth*, 196 Neb. 773, 246 N.W.2d 216 (1976).

**60-4,105 Appeal; procedure.**

(1) Unless otherwise provided by statute, any person aggrieved by a final decision or order of the director or the Department of Motor Vehicles to cancel, suspend, revoke, or refuse to issue or renew any operator's license, any decision

of the director, or suspension of an operator’s license under the License Suspension Act may appeal to either the district court of the county in which the person originally applied for the license or the district court of the county in which such person resides or, in the case of a nonresident, to the district court of Lancaster County within thirty days after the date of the final decision or order.

(2) Summons shall be served on the department within thirty days after the filing of the petition in the manner provided for service of a summons in section 25-510.02. Within thirty days after service of the petition and summons, the department shall prepare and transmit to the petitioner a certified copy of the official record of the proceedings before the department. The department shall require payment of a five-dollar fee prior to the transmittal of the official record. The petitioner shall file the transcript with the court within fourteen days after receiving the transcript from the department.

(3) The district court shall hear the appeal as in equity without a jury and determine anew all questions raised before the director. Either party may appeal from the decision of the district court to the Court of Appeals.

(4) The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

**Source:** Laws 1937, c. 141, § 29, p. 522; Laws 1941, c. 124, § 8, p. 475; C.S.Supp.,1941, § 60-433; R.S.1943, § 60-420; Laws 1984, LB 697, § 1; Laws 1988, LB 352, § 105; R.S.1943, (1988), § 60-420; Laws 1989, LB 285, § 55; Laws 1989, LB 352, § 1; Laws 1991, LB 732, § 121; Laws 1994, LB 211, § 3; Laws 1997, LB 752, § 139; Laws 1999, LB 704, § 14; Laws 2002, LB 876, § 79; Laws 2017, LB644, § 11.

**Cross References**

**Administrative Procedure Act**, see section 84-920.  
**License Suspension Act**, see section 43-3301.

- 1. Appeal
- 2. Miscellaneous

**1. Appeal**

A letter from the Department of Motor Vehicles explaining the applicable law did not permit it to reinstate a commercial driver’s license was not a final decision which canceled, suspended, revoked, or refused to issue or renew an operator’s license and was not final and appealable. *Woodward v. Lahm*, 295 Neb. 698, 890 N.W.2d 493 (2017).

Filing of transcript of the proceedings of the Department of Motor Vehicles relating to the revocation of a driver’s license within the time set out in this section is a necessary step to the acquisition of subject matter jurisdiction of an implied consent proceeding by the district court and the Supreme Court. *Ernest v. Jensen*, 226 Neb. 759, 415 N.W.2d 121 (1987).

Normally, trial court’s findings in revocation case are reviewed de novo in Supreme Court, but sustaining motion to dismiss appeal to district court will be affirmed where evidence presents no questions of fact. *Porter v. Jensen*, 223 Neb. 438, 390 N.W.2d 511 (1986).

Filing in the district court does not satisfy the requirement of this section that the bond be filed in the office of the director of the Department of Motor Vehicles within twenty days of the order concerning which complaint is made. *Bammer v. Jensen*, 222 Neb. 400, 384 N.W.2d 263 (1986).

The execution, approval, and filing of the bond required by this section are necessary steps to the acquisition of subject matter jurisdiction of an implied consent proceeding by the

district court. *Bammer v. Jensen*, 222 Neb. 400, 384 N.W.2d 263 (1986).

When seeking to appeal an order of the director of the Department of Motor Vehicles, the appellant must execute and file the required bond within twenty days of the date of the final order complained of; such filing is a jurisdictional requirement and condition precedent to the initiation of the appellate process. *Black v. State*, 218 Neb. 572, 358 N.W.2d 181 (1984).

An appeal from an order of the Department of Motor Vehicles under this section to revoke a driver’s license under section 39-669.16 (transferred to section 60-498.02) is in the nature of a proceeding in review of administrative agency, and such appeal is commenced or perfected by filing a petition within thirty days of the service of the final decision of the director and causing a summons to issue on the petition and be served within six months of such filing. Making an administrative agency a party defendant in an appeal under the provisions of this section or section 84-917(2) is not an action against the state within the meaning of section 24-319 (transferred to section 25-21,201) et seq. so as to require service of summons on the Governor and Attorney General. *Leach v. Dept. of Motor Vehicles*, 213 Neb. 103, 327 N.W.2d 615 (1982).

On appeal to the district court from an order of the Director of the Department of Motor Vehicles made under section 39-669.16 (transferred to section 60-498.02), revoking a motor vehicle operator’s license, the burden of proof is on the licensee to establish by a preponderance of the evidence the ground for

reversal. *Barton v. Director of Department of Motor Vehicles*, 194 Neb. 765, 235 N.W.2d 863 (1975).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. *Mackey v. Director of Department of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

The requirement that a petition on appeal be filed in the district court within thirty days from filing of final order of the director is mandatory and jurisdictional. *Miller v. Sullivan*, 194 Neb. 127, 230 N.W.2d 226 (1975).

Filing required bond within twenty days after revocation under point system is jurisdictional and a condition precedent to initiation of appeal process. *Buettner v. Sullivan*, 191 Neb. 592, 216 N.W.2d 872 (1974).

On appeal from order of revocation of a motor vehicle operator's license under the implied consent law, review is de novo as in equity. *Wiseman v. Sullivan*, 190 Neb. 724, 211 N.W.2d 906 (1973).

On appeal from the order of the Director of Motor Vehicles, the director shall furnish a transcript of the proceedings had before him and the appellant shall file it in the district court as provided in this section. *Doran v. Johns*, 186 Neb. 321, 182 N.W.2d 900 (1971).

Filing of approved bond within twenty days is a condition precedent to initiation of appeal; approval of bond by Auditor of Public Accounts is a jurisdictional requirement. *Lydick v. Johns*, 185 Neb. 716, 178 N.W.2d 581 (1970).

In an appeal from an implied consent proceeding such district court as used in this section refers to district court for county

where events occurred for which arrest was made. *Peck v. Dunlevey*, 184 Neb. 812, 172 N.W.2d 613 (1969).

Appeal may be taken from revocation of driver's license under implied consent law. *Prucha v. Department of Motor Vehicles*, 172 Neb. 415, 110 N.W.2d 75 (1961).

Statutes provide for direct attack by appeal from revocation of operator's license. *Stewart v. Ress*, 164 Neb. 876, 83 N.W.2d 901 (1957).

## 2. Miscellaneous

The director acts ministerially in revoking driver's license under point system, and appeal procedures contemplate a full evidentiary hearing which meets due process requirements of federal and state constitutions. *State v. Lessert*, 188 Neb. 243, 196 N.W.2d 166 (1972).

In addition to provision for appeal from revocation of motor vehicle operator's license under section 39-7,130 (transferred to section 60-4,184), R.R.S.1943, the procedures authorized by this section are available. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

At a hearing before the Director of Motor Vehicles to revoke an operator's license under the Implied Consent Law, findings of fact are sufficient to support a revocation order if they concisely state conclusions favorable to the order upon each contested issue of fact. *Prigge v. Johns*, 186 Neb. 761, 186 N.W.2d 497 (1971).

Validity of prior judgment of conviction cannot be raised on direct appeal. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

Procedure under this section was properly invoked to challenge revocation of license under point system act. *Durfee v. Ress*, 163 Neb. 768, 81 N.W.2d 148 (1957).

### 60-4,106 Appeal; effect.

Appeal from the sentence of conviction shall constitute an appeal from the revocation of the operator's license of the person so convicted.

**Source:** Laws 1929, c. 148, § 12, p. 518; C.S.1929, § 60-412; Laws 1937, c. 140, § 2, p. 505; Laws 1941, c. 124, § 2, p. 471; C.S.Supp.,1941, § 60-412; R.S.1943, § 60-429; R.S.1943, (1988), § 60-429; Laws 1989, LB 285, § 56; Laws 2001, LB 38, § 24.

### 60-4,107 Suspension or revocation; operation of vehicle prohibited; employment driving permit or medical hardship driving permit excepted.

Any resident or nonresident whose operator's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in the Motor Vehicle Operator's License Act shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and if permitted under the act. Such persons shall be eligible to operate a motor vehicle, except a commercial motor vehicle, under an employment driving permit as provided by section 60-4,129 or a medical hardship driving permit as provided in section 60-4,130.01.

**Source:** Laws 1937, c. 141, § 24, p. 520; Laws 1941, c. 124, § 5, p. 473; C.S.Supp.,1941, § 60-429; Laws 1943, c. 135, § 1, p. 465; R.S. 1943, § 60-418; Laws 1975, LB 259, § 4; R.S.1943, (1988), § 60-418; Laws 1989, LB 285, § 57; Laws 1993, LB 105, § 7.

Circumstantial evidence may serve to establish the operation or actual physical control of a motor vehicle. *State v. Hanger*, 241 Neb. 812, 491 N.W.2d 55 (1992).

A former Nebraska resident whose Nebraska driver's license is suspended or revoked and who obtains a license issued by another state before the period of suspension or revocation expires is not authorized to operate a motor vehicle in Nebraska

until a new license is obtained when and if permitted by this act. *State v. Workman*, 233 Neb. 503, 446 N.W.2d 16 (1989).

The gravamen of or the misconduct prohibited by this section and section 39-669.30 (transferred to section 60-4,186) is operation of a motor vehicle after judicial or administrative deprivation of the operator's privilege or license to operate a motor vehicle on the public highways of the State of Nebraska. Although the terms suspension and revocation were used interchangeably in this case, such misuse did not arise to the stature of sufficient prejudice to warrant reversal of judgment. *State v. Jost*, 219 Neb. 162, 361 N.W.2d 526 (1985).

This act refers to sections 60-401 to 60-440, and they have nothing to do with point system revocations. *Buettner v. Sullivan*, 191 Neb. 592, 216 N.W.2d 872 (1974).

While operator's license is suspended in this state, operation under license issued by another state can be had only when and if permitted. *State v. Smith*, 181 Neb. 846, 152 N.W.2d 16 (1967).

The privilege of operating a motor vehicle is not restored after revocation or suspension by lapse of time alone. *State v. Ruggiere*, 180 Neb. 869, 146 N.W.2d 373 (1966).

After suspension of license, right to operate motor vehicle depends upon the receipt of a new license. *Tyrrell v. State*, 173 Neb. 859, 115 N.W.2d 459 (1962).

### **60-4,108 Operating motor vehicle during period of suspension, revocation, or impoundment; penalties; juvenile; violation; handled in juvenile court.**

(1) It shall be unlawful for any person to operate a motor vehicle during any period that he or she is subject to a court order not to operate any motor vehicle for any purpose or during any period that his or her operator's license has been revoked or impounded pursuant to conviction or convictions for violation of any law or laws of this state, by an order of any court, or by an administrative order of the director. Except as otherwise provided by subsection (3) of this section or by other law, any person so offending shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the operator's license of such person to be revoked for a like period, unless the person was placed on probation, then revocation may be ordered at the court's discretion, (b) for a second or third such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period, and (c) for a fourth or subsequent such offense, be guilty of a Class I misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(2) It shall be unlawful for any person to operate a motor vehicle (a) during any period that his or her operator's license has been suspended, (b) after a period of revocation but before issuance of a new license, or (c) after a period of impoundment but before the return of the license. Except as provided in subsection (3) of this section, any person so offending shall be guilty of a Class III misdemeanor, and the court may, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court, except that if the person at the time of sentencing shows proof of reinstatement of his or her suspended operator's license, proof of issuance of a new license, or proof of return of the impounded license, the person shall only be fined in an amount not to exceed one hundred dollars. If the court orders the person not to operate a motor vehicle for a period of one year from the date ordered by the court, the court shall also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon

final judgment of any appeal or review, or upon the date that any probation is revoked.

(3) If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of this section.

**Source:** Laws 1957, c. 275, § 2, p. 1002; Laws 1959, c. 293, § 3, p. 1099; Laws 1977, LB 39, § 81; Laws 1979, LB 149, § 1; Laws 1985, LB 356, § 1; Laws 1986, LB 153, § 12; R.S.1943, (1988), § 60-430.01; Laws 1989, LB 285, § 58; Laws 1997, LB 772, § 4; Laws 2001, LB 38, § 25; Laws 2010, LB800, § 34; Laws 2012, LB1155, § 13; Laws 2017, LB263, § 65.

Proof of reinstatement of a suspended operator's license, pursuant to subsection (2) of this section, requires that a driver with a previously suspended license show that his or her license is no longer suspended and that his or her license validly and effectively allows the holder to operate a motor vehicle. *State v. Ralios*, 301 Neb. 1027, 921 N.W.2d 362 (2019).

Under this section, a conviction under subsection (2) may not be used to enhance a conviction under subsection (1) to a second, third, or subsequent offense. *State v. Mendoza-Bautista*, 291 Neb. 876, 869 N.W.2d 339 (2015).

Application of this section is not limited to the operation of a motor vehicle on a public highway. *State v. Frederick*, 291 Neb. 243, 864 N.W.2d 681 (2015).

The language "from the date ordered by the court" means "from the date selected by the court." *State v. Fuller*, 278 Neb. 585, 772 N.W.2d 868 (2009).

The penalty of 1 or 2 years' suspension found in this section does not constitute cruel and unusual punishment. *State v. Green*, 236 Neb. 33, 458 N.W.2d 472 (1990).

Sentence which ordered suspension of driver's license for one year following release from jail upon conviction of second offense driving while under suspension does not conform to sentencing requirements of this statute. *State v. Moore*, 215 Neb. 229, 337 N.W.2d 782 (1983).

Not abuse of discretion for court to deny probation and impose mandatory sentence under the statute following conviction. *State v. Adams*, 198 Neb. 729, 255 N.W.2d 280 (1977).

This section provides only penalty for driving motor vehicle while driver's license is suspended. *Stuckey v. Rohnert*, 179 Neb. 727, 140 N.W.2d 9 (1966).

Penalty for violation of this section is increased upon conviction of second offense. *State v. Steemer*, 175 Neb. 342, 121 N.W.2d 813 (1963).

The provisions of this section providing an increased penalty for second offense is not ex post facto as to a first offense committed prior to the enactment thereof. *State v. Steemer*, 175 Neb. 342, 121 N.W.2d 813 (1963).

### **60-4,109 Operating motor vehicle during period of suspension, revocation, or impoundment; city or village ordinance; penalties.**

(1) Upon conviction of any person in any court within this state of a violation of any city or village ordinance pertaining to the operation of a motor vehicle by such person during any period that he or she is subject to a court order not to operate any motor vehicle for any purpose or during any period that his or her operator's license has been revoked or impounded pursuant to any law of this state, such person shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the operator's license of such person to be revoked for a like period, unless the person was placed on probation, then revocation may be ordered at the court's discretion, and (b) for each subsequent such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(2) Upon conviction of any person in any court within this state of a violation of any city or village ordinance pertaining to the operation of a motor vehicle by such person (a) during any period that his or her operator's license has been

suspended pursuant to any law of this state, (b) after a period of revocation but before issuance of a new license, or (c) after a period of impoundment but before the return of the license, such person shall be guilty of a Class III misdemeanor, and the court may, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court, except that if the person at the time of sentencing shows proof of reinstatement of his or her suspended operator's license, proof of issuance of a new license, or proof of return of the impounded license, the person shall only be fined in an amount not to exceed one hundred dollars. If the court orders the person not to operate a motor vehicle for a period of one year after the date ordered by the court, the court shall also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

**Source:** Laws 1959, c. 293, § 4, p. 1099; R.S.1943, (1988), § 60-430.05; Laws 1989, LB 285, § 59; Laws 1997, LB 772, § 5; Laws 2001, LB 38, § 26; Laws 2017, LB263, § 66.

This section authorizes a city or village to prohibit the operation of a motor vehicle by a driver while his license is suspended. State v. Smith, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-4,110 Operating motor vehicle during period of suspension, revocation, or impoundment; impounding of motor vehicle; release, when authorized; restitution authorized.**

(1) Every motor vehicle, regardless of the registered owner of the motor vehicle, being operated by a person whose operator's license has been suspended, revoked, or impounded pursuant to a conviction or convictions for violation of section 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02 or by an order of any court or an administrative order of the director is hereby declared a public nuisance. The motor vehicle may be seized upon the arrest of the operator of the motor vehicle and impounded at the expense of the owner of the motor vehicle. If such operator's license is suspended, revoked, or impounded pursuant to subdivision (1)(c) of section 60-4,108 or section 60-498.01, 60-498.02, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the motor vehicle shall be impounded for not less than ten days nor more than thirty days. No motor vehicle impounded under this section shall be impounded for a period of time exceeding thirty days except as provided in subsection (3) of this section.

(2) Any motor vehicle impounded shall be released:

(a) To the holder of a bona fide lien on the motor vehicle executed prior to such impoundment when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying his or her lien on the motor vehicle;

(b) To the titled owner of the motor vehicle when the titled owner is a lessor. Upon learning the address or telephone number of the rental or leasing company which owns the motor vehicle, the impounding law enforcement agency shall immediately contact the company and inform it that the motor vehicle is available for the company to take possession; or

(c) To the registered owner, a registered co-owner, or a spouse of the owner upon good cause shown by an affidavit or otherwise to the court before which



the complaint is pending against the operator that the impounded motor vehicle is essential to the livelihood of the owner, co-owner, or spouse or the dependents of such owner, co-owner, or spouse.

(3) Any person who, at the direction of a peace officer, tows and stores a motor vehicle pursuant to this section shall have a lien upon such motor vehicle while in his or her possession for reasonable towing and storage charges and shall have a right to retain such motor vehicle until such charges are paid.

(4) If the registered owner of a motor vehicle was not the operator of the motor vehicle whose actions caused the motor vehicle to be impounded, the registered owner of the motor vehicle may recover civilly from the operator of the motor vehicle all expenses incurred by reason of the impoundment. In the case of a criminal action, the court may order such operator of the motor vehicle to pay restitution to the registered owner in an amount equal to any expenses incurred with respect to impoundment.

**Source:** Laws 1961, c. 321, § 1, p. 1024; Laws 1961, c. 322, § 1, p. 1025; R.S.1943, (1988), § 60-430.06; Laws 1989, LB 285, § 60; Laws 1998, LB 309, § 4; Laws 2003, LB 209, § 8; Laws 2012, LB1155, § 14.

**60-4,111 Violation; general penalty provisions.**

Whoever violates any provision of the Motor Vehicle Operator’s License Act for which no specific penalty is provided shall be guilty of a Class III misdemeanor.

**Source:** Laws 1937, c. 141, § 27, p. 522; Laws 1941, c. 124, § 7, p. 475; C.S.Supp.,1941, § 60-432; R.S.1943, § 60-430; Laws 1959, c. 293, § 2, p. 1098; Laws 1971, LB 20, § 1; Laws 1977, LB 39, § 80; R.S.1943, (1988), § 60-430; Laws 1989, LB 285, § 61.

Conviction and sentence of unlicensed driver affirmed. State v. Meints, 223 Neb. 199, 388 N.W.2d 813 (1986).

This section sets forth the general penalty for violation of the operator’s license act. State v. Ruggiere, 180 Neb. 869, 146 N.W.2d 373 (1966).

Conviction for second offense committed after amendment of this section was proper even though first offense was committed prior to amendment. State v. Steemer, 175 Neb. 342, 121 N.W.2d 813 (1963).

**60-4,111.01 Storage or compilation of information; retailer; seller; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.**

(1) The Department of Motor Vehicles, the courts, or law enforcement agencies may store or compile information acquired from an operator’s license or a state identification card for their statutorily authorized purposes.

(2) Except as otherwise provided in subsection (3) or (4) of this section, no person having use of or access to machine-readable information encoded on an operator’s license or a state identification card shall compile, store, preserve, trade, sell, or share such information. Any person who trades, sells, or shares such information shall be guilty of a Class IV felony. Any person who compiles, stores, or preserves such information except as authorized in subsection (3) or (4) of this section shall be guilty of a Class IV felony.

(3)(a) For purposes of compliance with and enforcement of restrictions on the purchase of alcohol, lottery tickets, and tobacco products, a retailer who sells any of such items pursuant to a license issued or a contract under the applicable statutory provision may scan machine-readable information encoded on an operator’s license or a state identification card presented for the purpose

of such a sale. The retailer may store only the following information obtained from the license or card: Age and license or card identification number. The retailer shall post a sign at the point of sale of any of such items stating that the license or card will be scanned and that the age and identification number will be stored. The stored information may only be used by a law enforcement agency for purposes of enforcement of the restrictions on the purchase of alcohol, lottery tickets, and tobacco products and may not be shared with any other person or entity.

(b) For purposes of compliance with the provisions of sections 28-458 to 28-462, a seller who sells methamphetamine precursors pursuant to such sections may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The seller may store only the following information obtained from the license or card: Name, age, address, type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification. The seller shall post a sign at the point of sale stating that the license or card will be scanned and stating what information will be stored. The stored information may only be used by law enforcement agencies, regulatory agencies, and the exchange for purposes of enforcement of the restrictions on the sale or purchase of methamphetamine precursors pursuant to sections 28-458 to 28-462 and may not be shared with any other person or entity. For purposes of this subsection, the terms exchange, methamphetamine precursor, and seller have the same meanings as in section 28-458.

(c) The retailer or seller shall utilize software that stores only the information allowed by this subsection. A programmer for computer software designed to store such information shall certify to the retailer that the software stores only the information allowed by this subsection. Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number or wrongfully certifying the software shall be a Class IV felony.

(d) A retailer or seller who knowingly stores more information than authorized under this subsection from the operator's license or state identification card shall be guilty of a Class IV felony.

(e) Information scanned, compiled, stored, or preserved pursuant to subdivision (a) of this subsection may not be retained longer than eighteen months unless required by state or federal law.

(4) In order to approve a negotiable instrument, an electronic funds transfer, or a similar method of payment, a person having use of or access to machine-readable information encoded on an operator's license or a state identification card may:

(a) Scan, compile, store, or preserve such information in order to provide the information to a check services company subject to and in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., as such act existed on January 1, 2021, for the purpose of effecting, administering, or enforcing a transaction requested by the holder of the license or card or preventing fraud or other criminal activity; or

(b) Scan and store such information only as necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability or to resolve a dispute or inquiry by the holder of the license or card.

(5) Except as provided in subdivision (4)(a) of this section, information scanned, compiled, stored, or preserved pursuant to this section may not be traded or sold to or shared with a third party; used for any marketing or sales purpose by any person, including the retailer who obtained the information; or, unless pursuant to a court order, reported to or shared with any third party. A person who violates this subsection shall be guilty of a Class IV felony.

**Source:** Laws 2001, LB 574, § 30; Laws 2010, LB261, § 1; Laws 2011, LB20, § 9; Laws 2019, LB79, § 13; Laws 2020, LB944, § 56; Laws 2021, LB149, § 11.  
Effective date August 28, 2021.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR  
VEHICLES OTHER THAN COMMERCIAL

**60-4,112 Sections; applicability.**

Sections 60-4,114.01 and 60-4,118.01 to 60-4,130.05 shall apply to the operation of any motor vehicle except a commercial motor vehicle.

**Source:** Laws 1989, LB 285, § 62; Laws 1991, LB 44, § 2; Laws 1993, LB 105, § 8; Laws 1994, LB 211, § 4; Laws 1998, LB 320, § 4; Laws 2001, LB 38, § 27; Laws 2003, LB 562, § 5; Laws 2008, LB911, § 10; Laws 2011, LB158, § 2; Laws 2014, LB983, § 16.

**60-4,113 Examining personnel; appointment; duties; examinations; issuance of certificate or receipt; license; state identification card; county treasurer; duties; delivery of license or card.**

(1) The director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a state identification card or an operator's license as provided in section 60-4,114, except as otherwise provided in subsection (8) of section 60-4,122. The same department personnel may be assigned to one or more counties by the director. In counties in which the county treasurer collects the fees and issues receipts, the county shall furnish office space for the administration of the operator's license examination. Department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate or receipt. The certificate may be presented to the county treasurer within ninety days after issuance, and the county treasurer shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt which is valid for up to thirty days. If an operator's license is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If department personnel refuse to issue an issuance certificate or receipt, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(2) The department may provide for the central production and issuance of operators' licenses and state identification cards. Production shall take place at a secure production facility designated by the director. The licenses and cards shall be of such a design and produced in such a way as to discourage, to the maximum extent possible, fraud in applicant enrollment, identity theft, and the forgery and counterfeiting of such licenses and cards. Delivery of an operator's license or state identification card shall be to the mailing address provided by the applicant at the time of application and may be provided by secure

electronic delivery to specified contact information at the request of the applicant.

**Source:** Laws 1929, c. 148, § 2, p. 513; C.S.1929, § 60-402; Laws 1937, c. 141, § 12, p. 511; C.S.Supp.,1941, § 60-402; R.S.1943, § 60-404; Laws 1945, c. 141, § 2, p. 447; Laws 1945, c. 142, § 1, p. 454; Laws 1957, c. 366, § 36, p. 1270; Laws 1961, c. 307, § 4, p. 972; Laws 1961, c. 315, § 3, p. 999; Laws 1961, c. 316, § 3, p. 1009; Laws 1961, c. 317, § 1, p. 1016; Laws 1967, c. 389, § 1, p. 1212; Laws 1976, LB 329, § 1; Laws 1977, LB 90, § 3; R.S.1943, (1988), § 60-404; Laws 1989, LB 285, § 64; Laws 1999, LB 704, § 15; Laws 2001, LB 574, § 9; Laws 2008, LB911, § 11; Laws 2011, LB215, § 11; Laws 2016, LB311, § 9; Laws 2020, LB944, § 57.

**60-4,114 County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.**

(1) The county treasurer may employ such additional clerical help as may be necessary to assist him or her in the performance of the ministerial duties required of him or her under the Motor Vehicle Operator's License Act and, for such additional expense, shall be reimbursed as set out in section 60-4,115.

(2) The director may, in his or her discretion, appoint department personnel to examine any applicant who applies for an initial license or whose license has been revoked or canceled to ascertain such person's ability to operate a motor vehicle properly and safely. Beginning on an implementation date designated by the director on or before January 1, 2022, the director may, in addition to appointing department personnel, appoint driver safety course instructors to examine any applicant who applies for an initial Class O operator's license or whose Class O operator's license has been revoked or canceled to ascertain such person's ability to operate a motor vehicle properly and safely.

(3) Except as otherwise provided in section 60-4,122, the application process, in addition to the other requisites of the act, shall include the following:

(a) An inquiry into the medical condition and visual ability of the applicant to operate a motor vehicle;

(b) An inquiry into the applicant's ability to drive and maneuver a motor vehicle, except that no driving skills test shall be conducted using an autocycle; and

(c) An inquiry touching upon the applicant's knowledge of the motor vehicle laws of this state, which shall include sufficient questions to indicate familiarity with the provisions thereof. Such knowledge inquiry may be performed remotely if proctored by an agent approved by the director.

(4) If an applicant is denied or refused a certificate for license or a license is canceled, such applicant or licensee shall have the right to an immediate appeal to the director from the decision. It shall be the duty of the director to review the appeal and issue a final order, to be made not later than ten days after the receipt of the appeal by the director. The director shall issue a final order not later than ten days following receipt of the medical opinion if the applicant or licensee submits reports from a physician of his or her choice for the director's consideration as provided in section 60-4,118.03. The applicant or licensee who files an appeal pursuant to this section shall notify the director in writing if he

or she intends to submit records or reports for consideration. Such notice must be received by the director not later than ten days after an appeal is filed pursuant to this section to stay the director's decision until after the consideration of such records or reports as provided in section 60-4,118.03. After consideration of evidence in the records of the applicant or licensee, including any records submitted by the applicant or licensee, the director shall make a determination of the physical or mental ability of the applicant or licensee to operate a motor vehicle and shall issue a final order. The order shall be in writing, shall be accompanied by findings of fact and conclusions of law, and shall be sent by regular United States mail to the last-known address of the applicant or licensee. The order may be appealed as provided in section 60-4,105.

**Source:** Laws 1929, c. 148, § 6, p. 514; C.S.1929, § 60-406; Laws 1931, c. 101, § 1, p. 272; Laws 1937, c. 141, § 16, p. 514; C.S.Supp.,1941, § 60-406; R.S.1943, § 60-408; Laws 1945, c. 141, § 5, p. 450; Laws 1947, c. 207, § 2, p. 676; Laws 1957, c. 366, § 38, p. 1272; Laws 1961, c. 307, § 5, p. 972; Laws 1961, c. 315, § 6, p. 1003; Laws 1961, c. 316, § 6, p. 1013; Laws 1972, LB 1439, § 1; Laws 1981, LB 76, § 2; R.S.1943, (1988), § 60-408; Laws 1989, LB 285, § 63; Laws 1994, LB 211, § 9; Laws 1999, LB 704, § 16; Laws 2001, LB 38, § 28; Laws 2001, LB 574, § 10; Laws 2011, LB215, § 12; Laws 2012, LB751, § 23; Laws 2015, LB231, § 22; Laws 2017, LB644, § 12; Laws 2020, LB944, § 58; Laws 2021, LB113, § 26.

Operative date August 28, 2021.

Proper amount of license fee for all applicants holding a motor vehicle operator's license on September 1, 1937, was seventy-five cents. *Cross v. Theobald*, 135 Neb. 199, 280 N.W. 841 (1938).

Under former act, collection and retention by county treasurer of fee of twenty-five cents was not in conflict with general

statute governing compensation of county treasurer, and was not void as extra compensation. *Mehrens v. Bauman*, 120 Neb. 110, 231 N.W. 701 (1930).

#### **60-4,114.01 Applicant for Class O or Class M license; issuance of LPD-learner's permit; restriction on reapplication for license.**

An applicant for a Class O or Class M license that fails three successive tests of his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 may be issued an LPD-learner's permit. The applicant shall not be eligible to reapply for the Class O or Class M license and retake such test until he or she presents proof of successful completion of a department-approved driver training school or until he or she has held an LPD-learner's permit for at least ninety days.

**Source:** Laws 2011, LB158, § 3.

#### **60-4,115 Fees; allocation; identity security surcharge.**

(1) Fees for operators' licenses and state identification cards shall be collected by department personnel or the county treasurer and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section and the 24/7 sobriety program permit and associated fees as outlined in subsection (5) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All

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other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund.

(2) The fees provided in this subsection in the following dollar amounts apply for operators' licenses and state identification cards.

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
State identification card:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for more than 4 years for person under 21	24.00	2.75	10.25	11.00
Valid for 5 years	24.00	3.50	10.25	10.25
Replacement	11.00	2.75	6.00	2.25
Class O or M operator's license:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for 5 years	24.00	3.50	10.25	10.25
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Provisional operator's permit:				
Original	15.00	2.75	12.25	0
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	15.00	2.75	12.25	0
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPD-learner's permit:				
Original	8.00	.25	5.00	2.75
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPE-learner's permit:				
Original	8.00	.25	5.00	2.75
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
School permit:				
Original	8.00	.25	5.00	2.75
Replacement	11.00	2.75	6.00	2.25
Reissue 2021	834			

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Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Farm permit:				
Original or renewal	5.00	.25	0	4.75
Replacement	5.00	.25	0	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Driving permits:				
Employment	45.00	0	5.00	40.00
Medical hardship	45.00	0	5.00	40.00
Replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Commercial driver's license:				
Valid for 1 year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Valid for more than 2 years but not more than 3 years	33.00	1.75	5.00	26.25
Valid for more than 3 years but not more than 4 years	44.00	1.75	5.00	37.25
Valid for 5 years	55.00	1.75	5.00	48.25
Biopic or telescopic lens restriction:				
Valid for one year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	10.00	1.75	5.00	3.25
CLP-commercial learner's permit:				
Original or renewal	10.00	.25	5.00	4.75
Replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
Seasonal permit:				
Original or renewal	10.00	.25	5.00	4.75
Replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75

(3) If the department issues an operator's license or a state identification card and collects the fees, the department shall remit the county portion of the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4)(a) The fee for an ignition interlock permit shall be forty-five dollars. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Forty dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Ignition Interlock Fund.

(b) The fee for a replacement ignition interlock permit shall be eleven dollars. Two dollars and seventy-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Six dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles

Cash Fund. Two dollars and twenty-five cents of the fee shall be remitted to the State Treasurer for credit to the General Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on an ignition interlock permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5)(a) The fee for a 24/7 sobriety program permit shall be forty-five dollars. Twenty-five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Fifteen dollars of the fee shall be remitted to the State Treasurer for credit to the General Fund. Five dollars of the fee shall be remitted to the State Treasurer for credit to the county general fund of the participant's county of residence.

(b) The fee for a replacement 24/7 sobriety program permit shall be eleven dollars. Two dollars and seventy-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund of the participant's county of residence. Six dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars and twenty-five cents of the fee shall be remitted to the State Treasurer for credit to the General Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on a 24/7 sobriety program permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(6) The department and its agents may collect an identity security surcharge to cover the cost of security and technology practices used to protect the identity of applicants for and holders of operators' licenses and state identification cards and to reduce identity theft, fraud, and forgery and counterfeiting of such licenses and cards to the maximum extent possible. The surcharge shall be in addition to all other required fees for operators' licenses and state identification cards. The amount of the surcharge shall be determined by the department. The surcharge shall not exceed eight dollars. The surcharge shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1929, c. 148, § 7, p. 515; C.S.1929, § 60-407; Laws 1931, c. 101, § 2, p. 272; Laws 1937, c. 148, § 17, p. 515; Laws 1941, c. 128, § 1, p. 483; Laws 1941, c. 176, § 1, p. 687; C.S.Supp., 1941, § 60-407; R.S.1943, § 60-409; Laws 1945, c. 141, § 6, p. 452; Laws 1947, c. 207, § 3, p. 677; Laws 1949, c. 181, § 3, p. 525; Laws 1951, c. 195, § 12, p. 742; Laws 1955, c. 242, § 1, p. 757; Laws 1957, c. 366, § 39, p. 1273; Laws 1961, c. 315, § 7, p. 1004; Laws 1961, c. 316, § 7, p. 1014; Laws 1963, c. 359, § 2, p. 1151; Laws 1967, c. 234, § 3, p. 624; Laws 1976, LB 329, § 2; Laws 1977, LB 90, § 5; Laws 1981, LB 207, § 1; Laws 1985, Second Spec. Sess., LB 5, § 1; R.S.1943, (1988), § 60-409; Laws 1989, LB 285, § 65; Laws 1992, LB 319, § 4; Laws 1993, LB 491, § 12; Laws 1995, LB 467, § 11; Laws 1998, LB 309, § 5; Laws 1998, LB 320, § 5; Laws 1999, LB 704, § 17; Laws 2001, LB 574, § 11; Laws 2005, LB 1, § 5; Laws 2006, LB 1008, § 2; Laws 2008, LB736, § 4; Laws 2008, LB911, § 12; Laws 2009, LB497, § 3; Laws 2011, LB170, § 2; Laws 2011, LB215, § 13; Laws 2011,



LB667, § 28; Laws 2014, LB777, § 4; Laws 2014, LB983, § 17; Laws 2016, LB311, § 10; Laws 2018, LB347, § 1; Laws 2021, LB113, § 27; Laws 2021, LB271, § 10.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 27, with LB271, section 10, to reflect all amendments.

**Note:** Changes made by LB113 became operative August 28, 2021. Changes made by LB271 became operative July 1, 2022.

**60-4,115.01 Fee payment returned or not honored; department powers; notice to applicant; contents; payment; department; duties.**

(1) If a fee required under the Motor Vehicle Operator's License Act for issuance of any operator's license or state identification card has been paid by check, draft, or other financial transaction, including an electronic financial transaction, and the check, draft, or financial transaction has been returned or not honored because of insufficient funds, no account, a stop-payment order, or any other reason, the department may cancel or refuse to issue or renew the operator's license or state identification card. Such license shall remain canceled or shall not be issued until the applicant has made full payment as required by subsection (4) of this section.

(2) Prior to taking action described in subsection (1) of this section, the department shall notify the applicant of the proposed action and the reasons for such action in writing, by first-class mail, mailed to the applicant's last-known mailing address provided by the applicant at the time of application.

(3) The department may take the action described in subsection (1) of this section no sooner than seven days after the notice required in subsection (2) of this section has been made.

(4) If an operator's license or state identification card is canceled or refused by the department pursuant to this section, the department shall issue or reinstate the operator's license or state identification card without delay upon the full payment of the fees owed by the applicant and payment of costs as authorized by section 84-620.

**Source:** Laws 2016, LB311, § 11.

**60-4,116 Applicant; department; duties.**

Prior to the issuance of any original or renewal operator's license, the issuance of a replacement operator's license, or the reissuance of any such license with a change of any classification, endorsement, or restriction, the department shall:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial learner's permit or commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled, (c) is not eligible, or (d) is deceased.

**Source:** Laws 2003, LB 562, § 6; Laws 2011, LB178, § 4; Laws 2012, LB751, § 24; Laws 2014, LB777, § 5; Laws 2014, LB983, § 18.

**60-4,117 Operator's license or state identification card; form; department personnel or county treasurer; duties.**

(1) An applicant shall present an issuance certificate to the county treasurer for an operator's license or state identification card. Department personnel or the county treasurer shall collect the applicable fee and surcharge as prescribed in section 60-4,115 and issue a receipt which is valid for up to thirty days. If there is cause for an operator's license to be issued, the receipt shall also authorize driving privileges for such thirty-day period. The license or card shall be delivered as provided in section 60-4,113.

(2) The operator's license and state identification card shall be in a form prescribed by the department. The license and card may include security features prescribed by the department. The license and card shall be conspicuously marked Nebraska Operator's License or Nebraska Identification Card, shall be, to the maximum extent practicable, tamper and forgery proof, and shall include the following information:

- (a) The full legal name and principal residence address of the holder;
- (b) The holder's full facial digital image;
- (c) A physical description of the holder, including gender, height, weight, and eye and hair colors;
- (d) The holder's date of birth;
- (e) The holder's signature;
- (f) The class of motor vehicle which the holder is authorized to operate and any applicable endorsements or restrictions;
- (g) The issuance and expiration date of the license or card;
- (h) The organ and tissue donation information specified in section 60-494;
- (i) A veteran designation as provided in section 60-4,189; and
- (j) Such other marks and information as the director may determine.

(3) Each operator's license and state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; race or ethnicity; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

**Source:** Laws 1929, c. 148, § 4, p. 513; C.S.1929, § 60-404; Laws 1937, c. 141, § 14, p. 512; C.S.Supp.,1941, § 60-404; R.S.1943, § 60-406; Laws 1959, c. 286, § 2, p. 1082; Laws 1961, c. 315, § 4, p. 1000; Laws 1961, c. 316, § 4, p. 1008; Laws 1977, LB 90, § 4; R.S. 1943, (1988), § 60-406; Laws 1989, LB 285, § 67; Laws 2001, LB 34, § 4; Laws 2001, LB 38, § 29; Laws 2001, LB 574, § 12; Laws 2008, LB911, § 13; Laws 2011, LB215, § 14; Laws 2013, LB93, § 5; Laws 2016, LB311, § 12; Laws 2019, LB192, § 2.

**60-4,118 Vision requirements; persons with physical impairments; physical or mental incompetence; prohibited act; penalty.**

(1)(a) No operator's license shall be granted to any applicant until such applicant satisfies the examiner that he or she possesses sufficient powers of eyesight to enable him or her to obtain a Class O license and to operate a motor vehicle on the highways of this state with a reasonable degree of safety, including:

(i) A minimum acuity level of vision. Such level may be obtained through the use of standard eyeglasses, contact lenses, or bioptic or telescopic lenses which are specially constructed vision correction devices which include a lens system attached to or used in conjunction with a carrier lens; and

(ii) A minimum field of vision. Such field of vision may be obtained through standard eyeglasses, contact lenses, or the carrier lens of the bioptic or telescopic lenses.

(b) The department may adopt and promulgate rules and regulations specifying such requirements.

(2) If a vision aid is used by the applicant to meet the vision requirements of this section, the operator's license of the applicant shall be restricted to the use of such vision aid when operating the motor vehicle. If the applicant fails to meet the vision requirements, the examiner shall require the applicant to present an optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant within ninety days of the applicant's license examination. If the vision reading meets the vision requirements prescribed by the department, the vision requirements of this section shall have been met. If the vision reading demonstrates that the applicant is required to use bioptic or telescopic lenses to operate a motor vehicle, the statement from the optometrist or ophthalmologist shall also indicate when the applicant needs to be reexamined for purposes of meeting the vision requirements for an operator's license as prescribed by the department. If such time period is two years or more after the date of the application, the license shall be valid for two years. If such time period is less than two years, the license shall be valid for such time period.

(3) If the applicant for an operator's license discloses that he or she has any other physical impairment which may affect the safety of operation by such applicant of a motor vehicle, the examiner shall require the applicant to show cause why such license should be granted and, through such personal examination and demonstration as may be prescribed by the director, to show the necessary ability to safely operate a motor vehicle on the highways. If the examiner is then satisfied that such applicant has the ability to safely operate a motor vehicle, an operator's license may be issued to the applicant subject, at the discretion of the director, to a limitation to operate only such motor vehicles at such time, for such purpose, and within such area as the license shall designate.

(4)(a) The director may, when requested by a law enforcement officer, when the director has reason to believe that a person may be physically or mentally incompetent to operate a motor vehicle, or when a person's driving record appears to the department to justify an examination, give notice to the person to appear before an examiner or a designee of the director for examination concerning the person's ability to operate a motor vehicle safely. Any such request by a law enforcement officer shall be accompanied by written justifica-

tion for such request and shall be approved by a supervisory law enforcement officer, police chief, or county sheriff.

(b) A refusal to appear before an examiner or a designee of the director for an examination after notice to do so shall be unlawful and shall result in the immediate cancellation of the person's operator's license by the director.

(c) If the person cannot qualify at the examination by an examiner, his or her operator's license shall be immediately surrendered to the examiner and forwarded to the director who shall cancel the person's operator's license.

(d) If the director determines that the person lacks the physical or mental ability to operate a motor vehicle, the director shall notify the person in writing of the decision. Upon receipt of the notice, the person shall immediately surrender his or her operator's license to the director who shall cancel the person's operator's license.

(e) Refusal to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her operator's license as required by this subsection shall be guilty of a Class III misdemeanor.

**Source:** Laws 1929, c. 148, § 5, p. 514; C.S.1929, § 60-405; Laws 1931, c. 104, § 2, p. 277; Laws 1937, c. 141, § 15, p. 512; C.S.Supp.,1941, § 60-405; R.S.1943, § 60-407; Laws 1945, c. 141, § 4, p. 449; Laws 1949, c. 179, § 11, p. 511; Laws 1951, c. 200, § 1, p. 753; Laws 1955, c. 240, § 1, p. 751; Laws 1955, c. 241, § 1, p. 754; Laws 1957, c. 272, § 1, p. 995; Laws 1959, c. 286, § 3, p. 1082; Laws 1959, c. 292, § 1, p. 1094; Laws 1961, c. 315, § 5, p. 1000; Laws 1961, c. 316, § 5, p. 1009; Laws 1963, c. 358, § 1, p. 1144; Laws 1963, c. 359, § 1, p. 1148; Laws 1965, c. 219, § 2, p. 637; Laws 1965, c. 381, § 1, p. 1230; Laws 1967, c. 234, § 2, p. 621; Laws 1971, LB 725, § 1; Laws 1973, LB 90, § 1; Laws 1974, LB 611, § 1; Laws 1974, LB 821, § 14; Laws 1977, LB 39, § 76; Laws 1984, LB 710, § 1; Laws 1984, LB 811, § 4; Laws 1987, LB 224, § 22; Laws 1988, LB 1093, § 1; Laws 1989, LB 284, § 5; R.S.1943, (1988), § 60-407; Laws 1989, LB 285, § 68; Laws 1990, LB 742, § 3; Laws 1993, LB 564, § 15; Laws 1994, LB 211, § 10; Laws 1995, LB 37, § 9; Laws 1995, LB 467, § 12; Laws 1998, LB 309, § 6; Laws 1998, LB 320, § 6; Laws 1999, LB 585, § 2; Laws 1999, LB 704, § 18; Laws 2001, LB 38, § 30; Laws 2001, LB 387, § 5; Laws 2006, LB 1008, § 3; Laws 2017, LB644, § 13; Laws 2019, LB270, § 34.

The contributory negligence of a minor driver under this section may be imputed to a parent accompanying, directly supervising, and controlling the minor in the operation of a vehicle. *Boker v. Luebbe*, 198 Neb. 282, 252 N.W.2d 297 (1977).

Operation of motor vehicle by minor under sixteen years of age was not within coverage of omnibus clause of insurance policy. *State Farm Mutual Auto. Ins. Co. v. Kersey*, 171 Neb. 212, 106 N.W.2d 31 (1960).

Legislature has recognized the use of the automobile by school children as a common means of transportation. *School Dist. No. 228 v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).

Minimum age fixed by law for driving automobiles, within meaning of the exclusionary clause of insurance policy, is fourteen years. *Hertzel v. Western Mutual Fire Ins. Co.*, 143 Neb. 19, 8 N.W.2d 313 (1943).

Inspection stations and garages are not required to inspect motor vehicles without compensation. *Beisner v. Cochran*, 138 Neb. 445, 293 N.W. 289 (1940).

Provision limiting right to operate motor vehicles to persons of sixteen years or over, and denying it to persons under sixteen, is not arbitrary or unreasonable, and is not deprivation of property without due process. *State ex rel. Oleson v. Graunke*, 119 Neb. 440, 229 N.W. 329 (1930).

### **60-4,118.01 Medical review of applicant or licensee; legislative intent.**

The Legislature finds and declares that:

(1) The operation of a motor vehicle on the highways of the state is a privilege and that no person should operate a motor vehicle on the highways of this state if not physically or mentally capable of safely doing so;

(2) The approval or denial of an application for an operator's license or the revocation of an operator's license may provide or prevent an opportunity for the applicant or licensee to obtain or maintain gainful employment; and

(3) Under certain circumstances, careful medical review and evaluation of an applicant for an operator's license or of a licensee is necessary to protect the interest of the applicant or licensee and the health, safety, and welfare of the public.

**Source:** Laws 1994, LB 211, § 5.

**60-4,118.02 Repealed. Laws 2017, LB644, § 21.**

**60-4,118.03 Mental, medical, or vision problems; records and reports; examinations; reports; appeal; immunity.**

Whenever the director reviews the denial or cancellation of an operator's license because of mental, medical, or vision problems that may affect the person's ability to safely operate a motor vehicle as provided in sections 60-4,114 and 60-4,118, the director may consider records and reports from a qualified physician. The applicant or licensee may cause a written report to be forwarded to the director by a physician of his or her choice pursuant to an immediate appeal to the director under section 60-4,114. The director shall grant reasonable time for the applicant or licensee to submit such records. The director shall give due consideration to any such report.

Reports received by the director for the purpose of assisting the director in determining whether a person is qualified to be licensed shall be for the confidential use of the director and any designees of the director and may not be divulged to any person other than the applicant or licensee or used in evidence in any legal proceeding, except that a report may be admitted in an appeal of an order of the director based on the report. Any person aggrieved by a decision of the director made pursuant to this section may appeal the decision as provided in section 60-4,105.

No person examining any applicant or licensee shall be liable in tort or otherwise for any opinion, recommendation, or report presented to the director if such action was taken in good faith and without malice.

**Source:** Laws 1994, LB 211, § 7; Laws 2017, LB644, § 14.

**60-4,118.04 Repealed. Laws 2017, LB644, § 21.**

**60-4,118.05 Age requirements; license issued; when.**

(1) No operator's license referred to in section 60-4,118 shall, under any circumstances, be issued to any person who has not attained the age of seventeen years.

(2) No operator's license shall be issued to a person under eighteen years of age applying for an operator's license under section 60-4,118 unless such person:

(a) Has possessed a valid provisional operator's permit for at least a twelve-month period beginning on the date of issuance of such person's provisional operator's permit; and

(b) Has not accumulated three or more points pursuant to section 60-4,182 during the twelve-month period immediately preceding the date of the application for the operator's license.

(3) The department may waive the written examination and the driving test required under section 60-4,118 for any person seventeen to twenty-one years of age applying for his or her initial operator's license if he or she has been issued a provisional operator's permit. The department shall not waive the written examination and the driving test required under this section if the person is applying for a CLP-commercial learner's permit or commercial driver's license or if the operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the provisional operator's permit.

**Source:** Laws 2001, LB 38, § 31; Laws 2008, LB911, § 14; Laws 2014, LB983, § 19.

**60-4,118.06 Ignition interlock permit; issued; when; operation restriction; revocation of permit by director; when.**

(1) Upon receipt by the director of (a) a certified copy of a court order issued pursuant to section 60-6,211.05, a certified copy of an order for installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to section 60-6,197.03, or a copy of an order from the Board of Pardons pursuant to section 83-1,127.02, (b) sufficient evidence that the person has surrendered his or her operator's license to the department and installed an approved ignition interlock device in accordance with such order, and (c) payment of the fee provided in section 60-4,115, such person may apply for an ignition interlock permit. A person subject to administrative license revocation under sections 60-498.01 to 60-498.04 shall be eligible for an ignition interlock permit as provided in such sections. The director shall issue an ignition interlock permit only for the operation of a motor vehicle equipped with an ignition interlock device. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(2) Upon expiration of the revocation period or upon expiration of an order issued by the Board of Pardons pursuant to section 83-1,127.02, a person may apply to the department in writing for issuance of an operator's license. Regardless of whether the license surrendered by such person under subsection (1) of this section has expired, the person shall apply for a new operator's license pursuant to the Motor Vehicle Operator's License Act.

(3)(a) An ignition interlock permit shall not be issued under this section or sections 60-498.01 to 60-498.04 to any person except in cases of a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198.

(b) An ignition interlock permit shall only be available to a holder of a Class M or O operator's license.

(4) The director shall revoke a person's ignition interlock permit issued under this section or sections 60-498.01 to 60-498.04 upon receipt of an (a) abstract of conviction indicating that the person had his or her operating privileges revoked or canceled or (b) administrative order revoking or canceling the person's operating privileges, if such conviction or order resulted from an incident other than the incident which resulted in the application for the ignition interlock permit.

**Source:** Laws 2001, LB 38, § 32; Laws 2003, LB 209, § 9; Laws 2008, LB736, § 5; Laws 2009, LB497, § 4; Laws 2010, LB924, § 2; Laws 2011, LB667, § 29; Laws 2012, LB751, § 25; Laws 2013, LB158, § 2; Laws 2019, LB269, § 3.

**60-4,119 Operators' licenses; state identification cards; digital image and digital signature; exception; procedure.**

(1) All state identification cards and operators' licenses, except farm permits, shall include a digital image and a digital signature of the cardholder or licensee as provided in section 60-484.02. Receipts for state identification cards and operators' licenses shall be issued by the county treasurer or the Department of Motor Vehicles. The director shall negotiate and enter into a contract to provide the necessary equipment, supplies, and forms for the issuance of the licenses and cards. All costs incurred by the Department of Motor Vehicles under this section shall be paid by the state out of appropriations made to the department. All costs of capturing the digital images and digital signatures shall be paid by the issuer from the fees provided to the issuer pursuant to section 60-4,115.

(2) A person who is out of the state at the time of renewal of his or her operator's license may apply for a license upon payment of a fee as provided in section 60-4,115. The license may be issued at any time within one year after the expiration of the original license. Such application shall be made to the department, and the department shall issue the license.

(3) Any operator's license and any state identification card issued to a minor as defined in section 53-103.23, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the operator's license or state identification card of a person who is not a minor.

**Source:** Laws 1977, LB 90, § 1; Laws 1978, LB 574, § 3; Laws 1981, LB 46, § 1; Laws 1982, LB 877, § 1; Laws 1984, LB 811, § 3; Laws 1986, LB 575, § 1; Laws 1989, LB 284, § 4; R.S.1943, (1988), § 60-406.04; Laws 1989, LB 285, § 69; Laws 1990, LB 980, § 9; Laws 1993, LB 201, § 1; Laws 1995, LB 467, § 13; Laws 1999, LB 704, § 19; Laws 2001, LB 574, § 13; Laws 2005, LB 1, § 6; Laws 2010, LB861, § 80; Laws 2014, LB777, § 6.

Applicant who otherwise qualifies for a motor vehicle license may not be denied such a license for failure to allow her photograph to be taken when the applicant refuses to have photograph taken because of deeply held religious beliefs. *Quaring v. Peterson*, 728 F.2d 1121 (8th Cir. 1984).

**60-4,120 Operator's license; state identification card; replacement.**

(1) Any person duly licensed or holding a valid state identification card issued under the Motor Vehicle Operator's License Act who loses his or her operator's license or card may make application to the department for a replacement license or card.

(2) If any person changes his or her name because of marriage or divorce or by court order or a common-law name change, he or she shall apply to the department for a replacement operator's license or state identification card and furnish proof of identification in accordance with section 60-484. If any person changes his or her address, the person shall apply to the department for a replacement operator's license or state identification card and furnish satisfactory evidence of such change. The application shall be made within sixty days after the change of name or address.

(3) In the event a mutilated or unreadable operator's license is held by any person duly licensed under the act or a mutilated or unreadable state identification card which was issued under the act is held by a person, such person may

obtain a replacement license or card. Upon report of the mutilated or unreadable license or card and application for a replacement license or card, a replacement license or card may be issued if the department is satisfied that the original license or card is mutilated or unreadable.

(4) If any person duly licensed under the act loses his or her operator's license or if any holder of a state identification card loses his or her card while temporarily out of the state, he or she may make application to the department for a replacement operator's license or card by applying to the department and reporting such loss. Upon receipt of a correctly completed application, the department shall cause to be issued a replacement operator's license or card.

(5) Any person who holds a valid operator's license or state identification card without a digital image shall surrender such license or card to the department within thirty days after resuming residency in this state. After the thirty-day period, such license or card shall be considered invalid and no license or card shall be issued until the individual has made application for replacement or renewal.

(6) Application for a replacement operator's license or state identification card shall include the information required under sections 60-484 and 60-484.04.

(7) An applicant may obtain a replacement operator's license or state identification card pursuant to subsection (1) or (3) of this section by electronic means in a manner prescribed by the department. No replacement license or card shall be issued unless the applicant has a digital image and digital signature preserved in the digital system.

(8) Each replacement operator's license or state identification card shall be issued with the same expiration date as the license or card for which the replacement is issued. The replacement license or card shall also state the new issuance date. Upon issuance of any replacement license or card, the license or card for which the replacement is issued shall be void.

(9) A replacement operator's license or state identification card issued under this section shall be delivered to the applicant as provided in section 60-4,113 after the county treasurer or department collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days.

**Source:** Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 517; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-415; Laws 1945, c. 141, § 8, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 10, p. 1005; Laws 1961, c. 316, § 10, p. 1015; Laws 1967, c. 234, § 7, p. 626; Laws 1969, c. 506, § 2, p. 2083; Laws 1971, LB 134, § 1; Laws 1971, LB 371, § 1; Laws 1972, LB 1296, § 2; Laws 1977, LB 90, § 6; Laws 1978, LB 606, § 1; Laws 1981, LB 46, § 3; Laws 1984, LB 811, § 6; Laws 1986, LB 575, § 2; Laws 1989, LB 284, § 9; R.S.1943, (1988), § 60-415; Laws 1989, LB 285, § 70; Laws 1993, LB 126, § 1; Laws 1993, LB 201, § 2; Laws 1994, LB 76, § 572; Laws 1998, LB 309, § 7; Laws 2001, LB 574, § 14; Laws 2005, LB 1, § 7; Laws 2011, LB215, § 15; Laws 2012, LB751, § 26; Laws 2014, LB777, § 7.



**60-4,120.01 Provisional operator's permit; application; issuance; operation restrictions.**

(1)(a) Any person who is at least sixteen years of age but less than eighteen years of age may be issued a provisional operator's permit by the Department of Motor Vehicles. The provisional operator's permit shall expire on the applicant's eighteenth birthday.

(b) No provisional operator's permit shall be issued to any person unless such person:

(i) Has possessed a valid LPD-learner's permit, LPE-learner's permit, or SCP-school permit for at least a six-month period beginning on the date of issuance of such person's LPD-learner's permit, LPE-learner's permit, or SCP-school permit; and

(ii) Has not accumulated three or more points pursuant to section 60-4,182 during the six-month period immediately preceding the date of the application for the provisional operator's permit.

(c) The requirements for the provisional operator's permit prescribed in subdivisions (2)(a) and (b) of this section may be completed prior to the applicant's sixteenth birthday. A person may apply for a provisional operator's permit and take the driving test and the written examination, if required, at any time within sixty days prior to his or her sixteenth birthday upon proof of age in the manner provided in section 60-484.

(2) In order to obtain a provisional operator's permit, the applicant shall present (a)(i) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (A) the effects of the consumption of alcohol on a person operating a motor vehicle, (B) occupant protection systems, (C) risk assessment, and (D) railroad crossing safety and (ii) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (b) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation including at least ten hours of motor vehicle operation between sunset and sunrise, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. If the applicant presents such a certificate, the applicant shall be required to successfully complete a driving test administered by the department. The written examination shall be waived if the applicant has been issued a Nebraska LPD-learner's permit or has been issued a Nebraska LPE-learner's permit and such permit is valid or has been expired for no more than one year. However, the department shall not waive the written examination if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPD-learner's or LPE-learner's permit. Upon presentation by the applicant of a form prescribed by the department showing successful completion of the driver safety course, the written examination and driving test may be waived. Upon presentation of the certificate, the written examination but not the driving test may be waived. Licensing staff shall waive the written examination and the driving test if the applicant has been issued a school permit and such permit is valid or has expired no more than one year prior to application. The written examination

shall not be waived if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the school permit.

(3)(a) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the period beginning at 6 a.m. and ending at 12 midnight except when he or she is en route to or from his or her residence to his or her place of employment or a school activity. The holder of a provisional operator's permit may operate a motor vehicle on the highways of this state at any hour of the day or night if accompanied by a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state.

(b) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the first six months of holding the permit with no more than one passenger who is not an immediate family member and who is under nineteen years of age.

(c) The holder of a provisional operator's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state.

(d) Enforcement of subdivisions (a), (b), and (c) of this subsection shall be accomplished only as a secondary action when the holder of the provisional operator's permit has been cited or charged with a violation of some other law.

(4) Department personnel or the county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each provisional operator's permit.

**Source:** Laws 1998, LB 320, § 7; Laws 1999, LB 704, § 20; Laws 2001, LB 387, § 6; Laws 2001, LB 574, § 15; Laws 2005, LB 1, § 8; Laws 2005, LB 675, § 2; Laws 2007, LB415, § 4; Laws 2008, LB911, § 15; Laws 2016, LB311, § 13.

**60-4,120.02 Provisional operator's permit; violations; revocation; not eligible for ignition interlock permit.**

(1) Any person convicted of violating a provisional operator's permit issued pursuant to section 60-4,120.01 by operating a motor vehicle in violation of subsection (3) of such section shall be guilty of an infraction and may have his or her provisional operator's permit revoked by the court pursuant to section 60-496 for a time period specified by the court. Before such person applies for another provisional operator's permit, he or she shall pay a reinstatement fee as provided in section 60-499.01 after the period of revocation has expired.

(2) A copy of an abstract of the court's conviction, including an adjudication, shall be transmitted to the director pursuant to sections 60-497.01 to 60-497.04.

(3) Any person who holds a provisional operator's permit and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

(4) For purposes of this section, conviction includes any adjudication of a juvenile.

**Source:** Laws 1998, LB 320, § 8; Laws 1999, LB 704, § 21; Laws 2001, LB 38, § 33; Laws 2012, LB751, § 27; Laws 2019, LB269, § 4.

**60-4,121 Military service; renewal of operator's license; period valid.**

(1) The operator's license of any person serving on active duty, other than members of the National Guard or reserves activated for training purposes only, outside the State of Nebraska as a member of the United States Armed Forces, or the spouse of any such person or a dependent of such member of the armed forces, shall be valid during such person's period of active duty and for not more than sixty days immediately following such person's date of separation from service.

(2) Each individual who is applying for renewal of his or her operator's license shall submit his or her previous license to the department personnel or, when the previous license is unavailable, furnish proof of identification in accordance with section 60-484.

**Source:** Laws 1929, c. 148, § 8, p. 516; C.S.1929, § 60-408; Laws 1937, c. 141, § 18, p. 515; C.S.Supp.,1941, § 60-408; R.S.1943, § 60-411; Laws 1945, c. 141, § 7, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 8, p. 1004; Laws 1961, c. 316, § 8, p. 1014; Laws 1967, c. 389, § 2, p. 1213; Laws 1967, c. 234, § 5, p. 625; Laws 1971, LB 244, § 1; Laws 1982, LB 877, § 2; Laws 1984, LB 811, § 5; Laws 1985, LB 240, § 1; Laws 1989, LB 284, § 7; R.S.1943, (1988), § 60-411; Laws 1989, LB 285, § 71; Laws 1996, LB 974, § 2; Laws 1997, LB 22, § 1; Laws 1999, LB 704, § 22; Laws 2011, LB215, § 16.

**60-4,122 Operator's license; state identification card; renewal procedure; law examination; exceptions; department; powers.**

(1) Except as otherwise provided in subsections (2), (3), and (8) of this section, no original or renewal operator's license shall be issued to any person until such person has demonstrated his or her ability to operate a motor vehicle safely as provided in section 60-4,114.

(2) Except as otherwise provided in this section and section 60-4,127, any person who renews his or her Class O or Class M license shall demonstrate his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 only at the discretion of department personnel, except that a person required to use bioptic or telescopic lenses shall be required to demonstrate his or her ability to drive and maneuver a motor vehicle safely each time he or she renews his or her license.

(3) Any person who renews his or her Class O or Class M license prior to or within one year after its expiration may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state as provided in subdivision (3)(c) of section 60-4,114 if his or her driving record abstract maintained in the computerized records of the department shows that such person's license is not impounded, suspended, revoked, or canceled.

(4) Except for operators' licenses issued to persons required to use bioptic or telescopic lenses, any person who renews his or her operator's license which has been valid for fifteen months or less shall not be required to take any examination required under section 60-4,114.

(5) Any person who renews a state identification card shall appear before department personnel and present his or her current state identification card or shall follow the procedure for electronic renewal in subsection (9) of this

section. Proof of identification shall be required as prescribed in sections 60-484 and 60-4,181 and the information and documentation required by section 60-484.04.

(6) A nonresident who applies for an initial operator's license in this state and who holds a valid operator's license from another state which is his or her state of residence may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she surrenders to the department his or her valid out-of-state operator's license.

(7) An applicant for an original operator's license may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she has been issued a Nebraska LPD-learner's permit that is valid or has been expired for no more than one year. The written examination shall not be waived if the original operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the Nebraska LPD-learner's permit.

(8)(a) A qualified licensee as determined by the department who is twenty-one years of age or older, whose license expires prior to his or her seventy-second birthday, and who has a digital image and digital signature preserved in the digital system may renew his or her Class O or Class M license twice by electronic means in a manner prescribed by the department using the preserved digital image and digital signature without taking any examination required under section 60-4,114 if such renewal is prior to or within one year after the expiration of the license, if his or her driving record abstract maintained in the records of the department shows that such person's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible. Every licensee, including a licensee who is out of the state at the time of renewal, must apply for renewal in person at least once every sixteen years and have a new digital image and digital signature captured.

(b) In order to allow for an orderly progression through the various types of operators' licenses issued to persons under twenty-one years of age, a qualified holder of an operator's license who is under twenty-one years of age and who has a digital image and digital signature preserved in the digital system may apply for an operator's license by electronic means in a manner prescribed by the department using the preserved digital image and digital signature if the applicant has passed any required examinations prior to application, if his or her driving record abstract maintained in the records of the department shows that such person's operator's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible.

(9) Any person who is twenty-one years of age or older and who has been issued a state identification card with a digital image and digital signature may electronically renew his or her state identification card by electronic means in a manner prescribed by the department using the preserved digital image and digital signature. Every person renewing a state identification card under this subsection, including a person who is out of the state at the time of renewal, must apply for renewal in person at least once every sixteen years and have a new digital image and digital signature captured.

(10) In addition to services available at driver license offices, the department may develop requirements for using electronic means for online issuance of

operators' licenses and state identification cards to qualified holders as determined by the department.

**Source:** Laws 1967, c. 234, § 6, p. 625; Laws 1984, LB 694, § 1; Laws 1989, LB 284, § 8; R.S.1943, (1988), § 60-411.01; Laws 1989, LB 285, § 72; Laws 1990, LB 369, § 16; Laws 1990, LB 742, § 4; Laws 1990, LB 980, § 10; Laws 1993, LB 370, § 87; Laws 1998, LB 320, § 9; Laws 1999, LB 704, § 23; Laws 2001, LB 387, § 7; Laws 2001, LB 574, § 16; Laws 2008, LB911, § 16; Laws 2011, LB158, § 4; Laws 2011, LB215, § 17; Laws 2014, LB777, § 8; Laws 2018, LB909, § 79; Laws 2019, LB270, § 35.

**60-4,123 LPD-learner's permit; application; issuance; operation restrictions.**

(1) Any person who is at least fifteen years of age may apply for an LPD-learner's permit from the department. In order to obtain an LPD-learner's permit, the applicant shall successfully complete a written examination. A person may take the written examination beginning sixty days prior to his or her fifteenth birthday but shall not be issued a permit until he or she is fifteen years of age. The written examination may be waived for any person who has been issued an LPE-learner's permit, LPD-learner's permit, or SCP-school permit that has been expired for no more than one year.

(2) Upon successful completion of the written examination and the payment of a fee and surcharge as prescribed in section 60-4,115, the applicant shall be issued an LPD-learner's permit as provided in section 60-4,113. The permit shall be valid for twelve months.

(3)(a) The holder of an LPD-learner's permit shall only operate a motor vehicle on the highways of this state if he or she is accompanied at all times by a licensed operator who is at least twenty-one years of age and who has been licensed by this state or another state and if (i) for all motor vehicles other than autocycles, motorcycles, or mopeds, he or she is actually occupying the seat beside the licensed operator, (ii) in the case of an autocycle, he or she is actually occupying the seat beside or in front of the licensed operator, or (iii) in the case of a motorcycle, other than an autocycle, or a moped, he or she is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(b) The holder of an LPD-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPD-learner's permit has been cited or charged with a violation of some other law.

(4) Department personnel or the county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each LPD-learner's permit.

**Source:** Laws 1989, LB 285, § 73; Laws 1991, LB 44, § 3; Laws 1998, LB 320, § 10; Laws 1999, LB 704, § 24; Laws 2001, LB 574, § 17; Laws 2005, LB 675, § 3; Laws 2007, LB415, § 5; Laws 2008, LB911, § 17; Laws 2015, LB231, § 23; Laws 2016, LB311, § 14; Laws 2018, LB909, § 80.

**60-4,123.01 Fourteen-year-old person; operation permitted.**

For purposes of driver training, any person who has attained or will attain the age of fourteen years on or before October 15 of the current year may operate a motor vehicle, other than an autocycle, upon the highways of this state if he or she is accompanied or, in the case of a motorcycle, other than an autocycle, or a moped, supervised at all times by a licensed operator who is a driver training instructor certified by the Commissioner of Education.

**Source:** Laws 1991, LB 44, § 4; Laws 2015, LB231, § 24; Laws 2018, LB909, § 81.

**60-4,124 School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty; not eligible for ignition interlock permit.**

(1) A person who is younger than sixteen years and three months of age but is older than fourteen years and two months of age may be issued a school permit if such person either resides outside a city of the metropolitan, primary, or first class or attends a school which is outside a city of the metropolitan, primary, or first class and if such person has held an LPE-learner's permit for two months. A school permit shall not be issued until such person has demonstrated that he or she is capable of successfully operating a motor vehicle, moped, or motorcycle and has in his or her possession an issuance certificate authorizing the county treasurer to issue a school permit. In order to obtain an issuance certificate, the applicant shall present (a) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (i) the effects of the consumption of alcohol on a person operating a motor vehicle, (ii) occupant protection systems, (iii) risk assessment, and (iv) railroad crossing safety and (b)(i) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (ii) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. The department may waive the written examination if the applicant has been issued an LPE-learner's permit or LPD-learner's permit and if such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPE-learner's permit.

(2) A person holding a school permit may operate a motor vehicle, moped, or motorcycle or an autocycle:

(a) To and from where he or she attends school, or property used by the school he or she attends for purposes of school events or functions, over the most direct and accessible route by the nearest highway from his or her place of residence to transport such person or any family member who resides with such person to attend duly scheduled courses of instruction and extracurricular or school-related activities at the school he or she attends or on property used by the school he or she attends; or

(b) Under the personal supervision of a licensed operator. Such licensed operator shall be at least twenty-one years of age and licensed by this state or another state and shall (i) for all motor vehicles other than autocycles, motorcy-

cles, or mopeds, actually occupy the seat beside the permitholder, (ii) in the case of an autocycle, actually occupy the seat beside or behind the permitholder, or (iii) in the case of a motorcycle, other than an autocycle, or a moped, if the permitholder is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(3) The holder of a school permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subsection shall be accomplished only as a secondary action when the holder of the school permit has been cited or charged with a violation of some other law.

(4) A person who is younger than sixteen years of age but is over fourteen years of age may be issued an LPE-learner's permit, which permit shall be valid for a period of three months. An LPE-learner's permit shall not be issued until such person successfully completes a written examination prescribed by the department and demonstrates that he or she has sufficient powers of eyesight to safely operate a motor vehicle, moped, or motorcycle or an autocycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if (i) for all motor vehicles other than autocycles, motorcycles, or mopeds, he or she has seated next to him or her a person who is a licensed operator, (ii) in the case of an autocycle, he or she has seated next to or behind him or her a person who is a licensed operator, or (iii) in the case of a motorcycle, other than an autocycle, or a moped, he or she is within visual contact of and is under the supervision of a person who, in the case of a motorcycle, is a licensed motorcycle operator or, in the case of a moped, is a licensed motor vehicle operator. Such licensed motor vehicle or motorcycle operator shall be at least twenty-one years of age and licensed by this state or another state.

(b) The holder of an LPE-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPE-learner's permit has been cited or charged with a violation of some other law.

(6) Department personnel or the county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 from each successful applicant for a school or LPE-learner's permit. All school permits shall be subject to impoundment or revocation under the terms of section 60-496. Any person who violates the terms of a school permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(7) Any person who holds a permit issued under this section and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

**Source:** Laws 1989, LB 285, § 74; Laws 1998, LB 320, § 11; Laws 2001, LB 387, § 8; Laws 2001, LB 574, § 18; Laws 2005, LB 675, § 4; Laws 2006, LB 853, § 9; Laws 2007, LB415, § 6; Laws 2008, LB911, § 18; Laws 2012, LB751, § 28; Laws 2015, LB231, § 25; Laws 2016, LB311, § 15; Laws 2016, LB814, § 1; Laws 2018, LB909, § 82; Laws 2019, LB269, § 5.

**60-4,125 LPD-learner's permit; LPE-learner's permit; violations; impoundment or revocation of permit; effect on eligibility for operator's license; not eligible for ignition interlock permit.**

(1) For any minor convicted or adjudicated of violating the terms of an LPD-learner's permit issued pursuant to section 60-4,123 or an LPE-learner's permit issued pursuant to section 60-4,124, the court shall, in addition to any other penalty or disposition, order the impoundment or revocation of such learner's permit and order that such minor shall not be eligible for another operator's license or school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(2) Any person who holds an LPD-learner's permit issued pursuant to section 60-4,123 and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

(3) A copy of the court's abstract or adjudication shall be transmitted to the director who shall place in an impound status or revoke the LPD-learner's or LPE-learner's permit of such minor in accordance with the order of the court and not again issue another operator's license or school, farm, LPD-learner's, or LPE-learner's permit to such minor until such minor has attained the age of sixteen years.

**Source:** Laws 1963, c. 359, § 7, p. 1153; R.S.1943, (1988), § 60-409.05; Laws 1989, LB 285, § 75; Laws 1991, LB 420, § 13; Laws 1998, LB 320, § 12; Laws 2001, LB 38, § 34; Laws 2004, LB 353, § 1; Laws 2012, LB751, § 29; Laws 2019, LB269, § 6.

**60-4,126 Farm permit; issuance; violations; penalty; not eligible for ignition interlock permit.**

(1) Any person who is younger than sixteen years of age but is over thirteen years of age and resides upon a farm in this state or is fourteen years of age or older and is employed for compensation upon a farm in this state may obtain a farm permit authorizing the operation of farm tractors, minitrucks, and other motorized implements of farm husbandry upon the highways of this state if the applicant for such farm permit furnishes satisfactory proof of age and satisfactorily demonstrates that he or she has knowledge of the operation of such equipment and of the rules of the road and laws respecting the operation of motor vehicles upon the highways of this state. The fee for an original, renewal, or replacement farm permit shall be the fee and surcharge prescribed in section 60-4,115. All farm permits shall be subject to revocation under the terms of section 60-496. Any person who violates the terms of a farm permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(2) Any person who holds a permit issued under this section and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

**Source:** Laws 1989, LB 285, § 76; Laws 1993, LB 491, § 13; Laws 1998, LB 320, § 13; Laws 2001, LB 574, § 19; Laws 2008, LB911, § 19;



Laws 2010, LB650, § 31; Laws 2012, LB751, § 30; Laws 2014, LB777, § 9; Laws 2019, LB269, § 7; Laws 2021, LB113, § 28.  
Operative date August 28, 2021.

**60-4,127 Motorcycle operation; Class M license required; issuance; examination.**

(1) No person shall operate a motorcycle on the alleys or highways of the State of Nebraska until such person has obtained a Class M license. No such license shall be issued until the applicant has (a) met the vision and physical requirements established under section 60-4,118 for operation of a motor vehicle and (b) successfully completed an examination, including the actual operation of a motorcycle, prescribed by the director, except that the required examination may be waived, including the actual operation of a motorcycle, if the applicant presents proof of successful completion of a motorcycle safety course under the Motorcycle Safety Education Act within the immediately preceding twenty-four months.

(2) Department personnel shall conduct the examination of the applicants and deliver to each successful applicant an issuance certificate or a receipt. If department personnel issue a receipt, department personnel shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. In counties where the county treasurer collects fees and issues receipts, the certificate may be presented to the county treasurer within ninety days after issuance. Upon presentation of an issuance certificate, the county treasurer shall collect the fee and surcharge for a Class M license as prescribed by section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. If department personnel refuse to issue an issuance certificate or receipt, the department personnel shall state such cause in writing and deliver such written cause to the applicant. The license shall be delivered as provided in section 60-4,113. If the applicant is the holder of an operator's license, the county treasurer or department personnel shall have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

(3) For purposes of this section, motorcycle does not include an auticycle.

**Source:** Laws 1967, c. 234, § 8, p. 626; Laws 1971, LB 962, § 1; Laws 1974, LB 328, § 2; Laws 1974, LB 821, § 13; Laws 1977, LB 90, § 2; Laws 1981, LB 22, § 15; Laws 1986, LB 1004, § 1; R.S. 1943, (1988), § 60-403.01; Laws 1989, LB 285, § 77; Laws 1990, LB 369, § 17; Laws 1993, LB 201, § 3; Laws 1993, LB 370, § 88; Laws 1999, LB 704, § 25; Laws 2001, LB 574, § 20; Laws 2008, LB911, § 20; Laws 2011, LB170, § 3; Laws 2011, LB215, § 18; Laws 2016, LB311, § 16; Laws 2018, LB909, § 83.

**Cross References**

Motorcycle Safety Education Act, see section 60-2120.

**60-4,128 Motorcycle operation without Class M license; penalty.**

(1) Any person violating the provisions of section 60-4,127 shall be guilty of a traffic infraction and shall upon conviction thereof be fined not less than ten dollars nor more than one hundred dollars. In addition, a person operating a motorcycle without a Class M license may be required to complete the basic motorcycle safety course as provided in the Motorcycle Safety Education Act.

(2) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1971, LB 1041, § 1; Laws 1975, LB 328, § 4; R.S.1943, (1988), § 60-403.04; Laws 1989, LB 285, § 78; Laws 1990, LB 827, § 1; Laws 2018, LB909, § 84.

**Cross References**

**Motorcycle Safety Education Act**, see section 60-2120.

**60-4,129 Employment driving permit; issuance; conditions; violations; penalty; revocation.**

(1) Any person whose operator's license is revoked under section 60-4,183 or 60-4,186 or suspended under section 43-3318 shall be eligible to operate any motor vehicle, except a commercial motor vehicle, in this state under an employment driving permit. An employment driving permit issued due to a revocation under section 60-4,183 or 60-4,186 is valid for the period of revocation. An employment driving permit issued due to a suspension of an operator's license under section 43-3318 is valid for no more than three months and cannot be renewed.

(2) Any person whose operator's license has been suspended or revoked pursuant to any law of this state, except section 43-3318, 60-4,183, or 60-4,186, shall not be eligible to receive an employment driving permit during the period of such suspension or revocation.

(3) A person who is issued an employment driving permit may operate any motor vehicle, except a commercial motor vehicle, (a) from his or her residence to his or her place of employment and return and (b) during the normal course of employment if the use of a motor vehicle is necessary in the course of such employment. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) The operation of a motor vehicle by the holder of an employment driving permit, except as provided in this section, shall be unlawful. Any person who violates this section shall be guilty of a Class IV misdemeanor.

(5) The director shall revoke a person's employment driving permit upon receipt of an abstract of conviction, other than a conviction which is based upon actions which resulted in the application for such employment driving permit, indicating that the person committed an offense for which points are assessed pursuant to section 60-4,182. If the permit is revoked in this manner, the person shall not be eligible to receive an employment driving permit for the remainder of the period of suspension or revocation of his or her operator's license.

**Source:** Laws 1975, LB 259, § 5; Laws 1977, LB 41, § 15; Laws 1982, LB 568, § 8; Laws 1986, LB 779, § 1; R.S.1943, (1988), § 39-669.34; Laws 1989, LB 285, § 79; Laws 1992, LB 291, § 16; Laws 1993, LB 370, § 89; Laws 1997, LB 752, § 140; Laws 2003, LB 209, § 10; Laws 2010, LB805, § 6; Laws 2011, LB667, § 30; Laws 2011, LB675, § 3.

Absence of provision to issue occupational driving permits to implied consent violators does not violate the equal protection clause of the fourteenth amendment to the U.S. Constitution. Statute's long-range objective is to reduce carnage caused by

intoxicated drivers by getting them off Nebraska roads. *Porter v. Jensen*, 223 Neb. 438, 390 N.W.2d 511 (1986).

Section 60-498.02, providing that drivers whose operator's licenses had been revoked for a period of 1 year were eligible for an employment driving permit, and this section, providing

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

**60-4,130 Employment driving permit; application; contents; driver improvement course; violations; penalty; loss of eligibility; appeal.**

(1) Application for an employment driving permit shall be made to the Department of Motor Vehicles on forms furnished for that purpose by the department. The application form shall contain such information as deemed necessary by the director to carry out this section and section 60-4,129. If the department has a digital image and digital signature of the applicant preserved in the digital system implemented under section 60-484.01, the employment driving permit, if issued, may contain such image and signature. The application form shall also include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process? To be eligible for an employment driving permit, the applicant shall furnish, along with the application to the director, the following:

(a) An affidavit from the applicant's employer stating that such applicant is required to operate a motor vehicle from his or her residence to his or her place of employment and return;

(b) If such applicant requires the use of a motor vehicle during the normal course of employment, an affidavit from the applicant's employer setting forth the facts establishing such requirement;

(c) An affidavit stating that there exists no other reasonable alternative means of transportation to and from work available to the applicant; and

(d) If the applicant is self-employed, an affidavit to the department setting forth the provisions of his or her employment.

(2) Except as otherwise provided in this subsection, upon making application for such permit, the applicant shall certify that he or she will attend and complete, within sixty days, a driver improvement course presented by the department or show successful completion of the driver education and training course as provided in section 60-4,183. If such course is not completed, the employment driving permit shall be surrendered to the department. If any person fails to return to the department the permit as provided in this subsection, the department shall direct any peace officer or authorized representative of the department to secure possession of the permit and to return the permit to the department. An applicant whose operator's license has been suspended pursuant to section 43-3318 is not required to fulfill such driver improvement or education and training course requirements. All applicants shall file and maintain proof of financial responsibility as required by the Motor Vehicle Safety Responsibility Act.

(3) Any person who fails to surrender a permit, as required by this section, shall be guilty of a Class IV misdemeanor.

(4) The fee prescribed in section 60-4,115 shall be submitted to the department along with the application for an employment driving permit.

(5) When the holder of an employment driving permit is convicted, on or after the date of issuance of the employment driving permit, of any traffic violation or of operating a motor vehicle for a purpose other than specified by such permit, the person shall not be eligible to receive another employment

driving permit during that particular period of revocation. This subsection does not apply to a holder of an employment driving permit if the reason for his or her license revocation or suspension only involved a suspension under section 43-3318 and not a revocation under any other section.

(6) Any person who feels himself or herself aggrieved because of the refusal of the director to issue the employment driving permit may appeal in the manner set forth in section 60-4,105.

**Source:** Laws 1975, LB 259, § 6; Laws 1977, LB 41, § 16; Laws 1982, LB 928, § 38; R.S.1943, (1988), § 39-669.35; Laws 1989, LB 285, § 80; Laws 1993, LB 370, § 90; Laws 1994, LB 76, § 573; Laws 1997, LB 752, § 141; Laws 1999, LB 704, § 26; Laws 2001, LB 574, § 21.

**Cross References**

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-4,130.01 Medical hardship driving permit; issuance; conditions; violations; penalty; revocation.**

(1) Any person whose license or privilege to operate a motor vehicle in this state is revoked under sections 60-4,183 and 60-4,186 shall be eligible to operate any motor vehicle, except a commercial motor vehicle, in this state under a medical hardship driving permit, valid for a period of ninety days. Upon expiration of the permit, a person may reapply for a medical hardship driving permit in the same manner as the original application.

(2) Any person whose license or privilege to operate a motor vehicle in this state has been suspended or revoked pursuant to any law of this state, except sections 60-4,183 and 60-4,186, shall not be eligible to receive a medical hardship driving permit during the period of such suspension or revocation.

(3) An individual who is issued a medical hardship driving permit may operate any motor vehicle, except a commercial motor vehicle, from his or her residence or place of employment to a hospital, clinic, doctor's office, or similar location and return. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) The operation of a motor vehicle by the holder of a medical hardship driving permit, except as provided in this section, shall be unlawful. Any person who violates this section shall be guilty of a Class IV misdemeanor.

(5) The director shall revoke the medical hardship driving permit for an individual upon receipt of an abstract of conviction, other than a conviction which is based upon actions which resulted in the application for such medical hardship driving permit, indicating that the individual committed an offense for which points are assessed pursuant to section 60-4,182. If the permit is revoked in this manner, the individual shall not be eligible to receive a medical hardship driving permit for the remainder of the period of suspension or revocation of his or her operator's license or privilege to operate a motor vehicle.

**Source:** Laws 1993, LB 105, § 9.

**60-4,130.02 Medical hardship driving permit; application; contents; loss of eligibility; appeal.**

(1) Application for a medical hardship driving permit shall be made to the Department of Motor Vehicles on forms furnished for that purpose by the department. The application form shall contain such information as deemed necessary by the director to carry out this section and section 60-4,130.01. If the department has a digital image and digital signature of the applicant preserved in the digital system implemented under section 60-484.01, the medical hardship driving permit, if issued, may contain such image and signature. The application form shall also include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process? To be eligible for a medical hardship driving permit, the applicant shall furnish, along with the application to the director, the following:

(a) An affidavit from the applicant's physician stating that it is necessary for such applicant to receive medical treatment at a location other than the applicant's residence and that the treatment will not impair the applicant's ability to operate a motor vehicle; and

(b) An affidavit stating that there exists no other reasonable alternative means of transportation to and from the site of medical treatment available to the applicant.

(2) The applicant shall also be required to file and maintain proof of financial responsibility as required by the Motor Vehicle Safety Responsibility Act.

(3) The fee prescribed in section 60-4,115 shall be submitted to the department along with the application for a medical hardship driving permit.

(4) When the holder of a medical hardship driving permit is convicted, on or after the date of issuance of the permit, of any traffic violation or of operating a motor vehicle for a purpose other than specified by such permit, the person shall not be eligible to receive another medical hardship driving permit during that particular period of revocation.

(5) Any person who feels himself or herself aggrieved because of the refusal of the director to issue the medical hardship driving permit may appeal in the manner set forth in section 60-4,105.

**Source:** Laws 1993, LB 105, § 10; Laws 1994, LB 76, § 574; Laws 1999, LB 704, § 27; Laws 2001, LB 574, § 22.

**Cross References**

Motor Vehicle Safety Responsibility Act, see section 60-569.

**60-4,130.03 Operator less than twenty-one years of age; driver improvement course; suspension; reinstatement.**

(1) Any person less than twenty-one years of age who holds an operator's license or a provisional operator's permit and who has accumulated, within any twelve-month period, a total of six or more points on his or her driving record pursuant to section 60-4,182 shall be notified by the Department of Motor Vehicles of that fact and ordered to attend and successfully complete a driver improvement course consisting of at least eight hours of department-approved instruction. Notice shall be sent by regular United States mail to the last-known address as shown in the records of the department. If such person fails to complete the driver improvement course within three months after the date of notification, he or she shall have his or her operator's license suspended by the department.

(2) The director shall issue an order summarily suspending an operator's license until the licensee turns twenty-one years of age. Such order shall be sent by regular United States mail to the last-known address as shown in the records of the department. Such person shall not have his or her operator's license reinstated until he or she (a) has successfully completed the driver improvement course or has attained the age of twenty-one years and (b) has complied with section 60-4,100.01.

**Source:** Laws 1998, LB 320, § 14; Laws 2001, LB 38, § 35; Laws 2012, LB751, § 31.

**60-4,130.04 Commercial driver safety course instructors; requirements; driver safety course; requirements.**

Commercial driver safety course instructors shall possess competence as outlined in rules and regulations adopted and promulgated by the Department of Motor Vehicles. Instructors who teach the department-approved driver safety course in a public school or institution and possess competence as outlined in a driver's education endorsement shall be eligible to sign a form prescribed by the department or electronically submit test results to the department showing successful completion of the driver safety course. Each public school or institution offering a department-approved driver safety course shall be required to obtain a certificate and pay the fee pursuant to section 60-4,130.05. The Nebraska Safety Center shall offer a department-approved driver safety course at least once each year in any county where no approved course is offered.

**Source:** Laws 1998, LB 320, § 15; Laws 2018, LB909, § 85.

**60-4,130.05 Driver safety courses; rules and regulations; fee.**

The Department of Motor Vehicles shall adopt and promulgate rules and regulations for the approval and administration of driver safety courses. No driver safety course shall be approved until a certificate is obtained from the department. The certificate shall be valid for two years after the date of issuance. Each original and renewal certificate application for a driver safety course shall be accompanied by a one-hundred-dollar fee. The fee shall be collected by the department and remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1998, LB 320, § 16.

(h) PROVISIONS APPLICABLE TO OPERATION  
OF COMMERCIAL MOTOR VEHICLES

**60-4,131 Sections; applicability; terms, defined.**

(1) Sections 60-462.01 and 60-4,132 to 60-4,172 shall apply to the operation of any commercial motor vehicle.

(2) For purposes of such sections:

(a) Disqualification means:

(i) The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to operate a commercial motor vehicle;

(ii) A determination by the Federal Motor Carrier Safety Administration, under the rules of practice for motor carrier safety contained in 49 C.F.R. part

386, that a person is no longer qualified to operate a commercial motor vehicle under 49 C.F.R. part 391; or

(iii) The loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. 383.51;

(b) Downgrade means the state:

(i) Allows the driver of a commercial motor vehicle to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 C.F.R. part 391, as provided in 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3;

(ii) Allows the driver of a commercial motor vehicle to change his or her self-certification to intrastate only, if the driver qualifies under a state's physical qualification requirements for intrastate only;

(iii) Allows the driver of a commercial motor vehicle to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of a state driver qualification requirement; or

(iv) Removes the commercial driver's license privilege from the operator's license;

(c) Employee means any operator of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer;

(d) Employer means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle;

(e) Endorsement means an authorization to an individual's CLP-commercial learner's permit or commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(f) Foreign means outside the fifty United States and the District of Columbia;

(g) Imminent hazard means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment;

(h) Issue and issuance means initial issuance, transfer, renewal, or upgrade of a CLP-commercial learner's permit, commercial driver's license, nondomiciled CLP-commercial learner's permit, or nondomiciled commercial driver's license, as described in 49 C.F.R. 383.73;

(i) Medical examiner means an individual certified by the Federal Motor Carrier Safety Administration and listed on the National Registry of Certified Medical Examiners in accordance with 49 C.F.R. part 390, subpart D;

(j) Medical examiner's certificate means a form meeting the requirements of 49 C.F.R. 391.43 issued by a medical examiner in compliance with such regulation;

(k) Medical variance means the Federal Motor Carrier Safety Administration has provided a driver with either an exemption letter permitting operation of a

commercial motor vehicle pursuant to 49 C.F.R. 381, subpart C, or 49 C.F.R. 391.64 or a Skill Performance Evaluation Certificate permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 391.49;

(l) Nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license means a CLP-commercial learner's permit or commercial driver's license, respectively, issued by this state or other jurisdiction under either of the following two conditions:

(i) To an individual domiciled in a foreign country meeting the requirements of 49 C.F.R. 383.23(b)(1); or

(ii) To an individual domiciled in another state meeting the requirements of 49 C.F.R. 383.23(b)(2);

(m) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(n) State means a state of the United States and the District of Columbia;

(o) State of domicile means that state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has the intention of returning whenever he or she is absent;

(p) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks that have an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more and that are either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle;

(q) Third-party skills test examiner means a person employed by a third-party tester who is authorized by this state to administer the commercial driver's license skills tests specified in 49 C.F.R. part 383, subparts G and H;

(r) Third-party tester means a person, including, but not limited to, another state, a motor carrier, a private driver training facility or other private institution, or a department, agency, or instrumentality of a local government, authorized by this state to employ skills test examiners to administer the commercial driver's license skills tests specified in 49 C.F.R. part 383, subparts G and H;

(s) United States means the fifty states and the District of Columbia; and

(t) Vehicle group means a class or type of vehicle with certain operating characteristics.

**Source:** Laws 1989, LB 285, § 81; Laws 1990, LB 980, § 11; Laws 1993, LB 420, § 5; Laws 1996, LB 323, § 2; Laws 2003, LB 562, § 7; Laws 2005, LB 76, § 7; Laws 2011, LB178, § 5; Laws 2014, LB983, § 20; Laws 2016, LB666, § 4; Laws 2016, LB977, § 14; Laws 2018, LB629, § 2; Laws 2018, LB909, § 86.

**60-4,131.01 Individuals operating commercial motor vehicles for military purposes; applicability of sections.**

Sections 60-462.01 and 60-4,132 to 60-4,172 shall not apply to individuals who operate commercial motor vehicles for military purposes, including and limited to:



- (1) Active duty military personnel;
- (2) Members of the military reserves, other than military technicians;
- (3) Active duty United States Coast Guard personnel; and
- (4) Members of the National Guard on active duty, including:
  - (a) Personnel on full-time National Guard duty;
  - (b) Personnel on part-time National Guard training; and
  - (c) National Guard military technicians required to wear military uniforms.

Such individuals must have a valid military driver's license unless such individual is operating the vehicle under written orders from a commanding officer in an emergency declared by the federal government or by the State of Nebraska.

**Source:** Laws 2006, LB 853, § 13; Laws 2011, LB178, § 6; Laws 2014, LB983, § 21; Laws 2018, LB629, § 3; Laws 2018, LB909, § 87.

#### **60-4,132 Purposes of sections.**

The purposes of sections 60-462.01, 60-4,133, and 60-4,137 to 60-4,172 are to implement the requirements mandated by the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, 49 U.S.C. 101 et seq., section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and federal regulations as such acts and regulations existed on January 1, 2021, and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

**Source:** Laws 1989, LB 285, § 82; Laws 1993, LB 7, § 2; Laws 1993, LB 420, § 6; Laws 2002, LB 499, § 1; Laws 2003, LB 562, § 8; Laws 2005, LB 76, § 8; Laws 2011, LB178, § 7; Laws 2014, LB983, § 22; Laws 2018, LB629, § 4; Laws 2018, LB909, § 88; Laws 2019, LB79, § 14; Laws 2020, LB944, § 59; Laws 2021, LB149, § 12.

Effective date August 28, 2021.

#### **60-4,133 Person possessing commercial driver's license authorizing operation of Class A combination vehicle; rights.**

Any person possessing a valid commercial driver's license authorizing the operation of a Class A combination vehicle may lawfully operate a Class A, B, or C commercial motor vehicle without a hazardous materials endorsement if such person:

- (1) Is acting within the scope of his or her employment as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, or livestock feeder; and
- (2) Is operating a service vehicle that is:
  - (a) Transporting diesel fuel in a quantity of one thousand gallons or less; and

(b) Clearly marked with a “flammable” or “combustible” placard, as appropriate.

**Source:** Laws 2018, LB629, § 5.

**60-4,134 Holder of Class A commercial driver’s license; hazardous materials endorsement not required; conditions.**

In conformance with section 7208 of the federal Fixing America’s Surface Transportation Act and 49 C.F.R. 383.3(i), as such section and regulation existed on January 1, 2021, no hazardous materials endorsement authorizing the holder of a Class A commercial driver’s license to operate a commercial motor vehicle transporting diesel fuel shall be required if such driver is (1) operating within the state and acting within the scope of his or her employment as an employee of a custom harvester operation, an agrichemical business, a farm retail outlet and supplier, or a livestock feeder and (2) operating a service vehicle that is (a) transporting diesel in a quantity of one thousand gallons or less and (b) clearly marked with a flammable or combustible placard, as appropriate.

**Source:** Laws 2018, LB909, § 90; Laws 2019, LB79, § 15; Laws 2020, LB944, § 60; Laws 2021, LB149, § 13.  
Effective date August 28, 2021.

**60-4,135 Repealed. Laws 1993, LB 7, § 5.**

**60-4,136 Repealed. Laws 1990, LB 980, § 37.**

**60-4,137 Operation of commercial motor vehicle; valid commercial driver’s license or valid CLP-commercial learner’s permit required.**

Any resident of this state operating a commercial motor vehicle on the highways of this state shall possess a valid commercial driver’s license or a valid CLP-commercial learner’s permit issued pursuant to the Motor Vehicle Operator’s License Act.

**Source:** Laws 1989, LB 285, § 87; Laws 1993, LB 7, § 3; Laws 1993, LB 420, § 7; Laws 2001, LB 108, § 1; Laws 2003, LB 562, § 9; Laws 2005, LB 76, § 9; Laws 2011, LB178, § 8; Laws 2014, LB983, § 23.

**60-4,138 Commercial drivers’ licenses and restricted commercial drivers’ licenses; classification.**

(1) Commercial drivers’ licenses and restricted commercial drivers’ licenses shall be issued by the department in compliance with 49 C.F.R. parts 383 and 391, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers’ licenses shall be as follows:

(a) Class A Combination Vehicle — Any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T — Double/triple trailers;

(b) P — Passenger;

(c) N — Tank vehicle;

(d) H — Hazardous materials;

(e) X — Combination tank vehicle and hazardous materials; and

(f) S — School bus.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) E — No manual transmission equipped commercial motor vehicle;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

(d) M — Operation of a commercial motor vehicle which is not a Class A passenger vehicle;

(e) N — Operation of a commercial motor vehicle which is not a Class A or Class B passenger vehicle;

(f) O — No tractor-trailer commercial motor vehicle;

(g) V — Operation of a commercial motor vehicle for drivers with medical variance documentation. The documentation shall be required to be carried on the driver's person while operating a commercial motor vehicle; and

(h) Z — No full air brake equipped commercial motor vehicle.

**Source:** Laws 1989, LB 285, § 88; Laws 1990, LB 980, § 14; Laws 1993, LB 420, § 8; Laws 1996, LB 938, § 1; Laws 2003, LB 562, § 10; Laws 2006, LB 1007, § 6; Laws 2011, LB178, § 9; Laws 2014, LB983, § 24; Laws 2020, LB944, § 61.

#### **60-4,139 Commercial motor vehicle; nonresident; operating privilege.**

Any nonresident may operate a commercial motor vehicle upon the highways of this state if (1) such nonresident has in his or her immediate possession a valid commercial driver's license or a valid commercial learner's permit issued by his or her state of residence or by a jurisdiction with standards that are in accord with 49 C.F.R. parts 383 and 391, (2) the license or permit is not suspended, revoked, or canceled, (3) such nonresident is not disqualified from

operating a commercial motor vehicle, and (4) the commercial motor vehicle is not operated in violation of any downgrade.

**Source:** Laws 1989, LB 285, § 89; Laws 2001, LB 108, § 2; Laws 2006, LB 853, § 10; Laws 2011, LB178, § 10; Laws 2014, LB983, § 25.

**60-4,139.01 School bus endorsement; requirements.**

Beginning September 30, 2005, an applicant for a school bus endorsement shall satisfy the following three requirements:

- (1) Pass the knowledge and skills test for obtaining a passenger vehicle endorsement;
- (2) Have knowledge covering at least the following three topics:
  - (a) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and passenger safety devices required for school buses by state or federal law or regulation;
  - (b) Emergency exits and procedures for safely evacuating passengers in an emergency; and
  - (c) State and federal laws and regulations related to safely traversing highway-rail grade crossings; and
- (3) Take a driving skills test in a school bus of the same vehicle group as the school bus the applicant will drive.

**Source:** Laws 2003, LB 562, § 11.

**60-4,140 Multiple licenses; violation; penalty.**

No person who operates a commercial motor vehicle upon the highways of this state shall at any time have more than one operator's license issued by any state. Any person who violates this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 90.

**60-4,141 Operation outside classification of license; restrictions; violation; penalty.**

(1) Except as provided in subsections (2), (3), and (4) of this section, no person shall operate any class of commercial motor vehicle upon the highways of this state unless such person possesses a valid commercial driver's license authorizing the operation of the class of commercial motor vehicle being operated, except that (a) any person possessing a valid commercial driver's license authorizing the operation of a Class A commercial motor vehicle may lawfully operate any Class B or C commercial motor vehicle and (b) any person possessing a valid commercial driver's license authorizing the operation of a Class B commercial motor vehicle may lawfully operate a Class C commercial motor vehicle. No person shall operate upon the highways of this state any commercial motor vehicle which requires a specific endorsement unless such person possesses a valid commercial driver's license with such endorsement. No person possessing a restricted commercial driver's license shall operate upon the highways of this state any commercial motor vehicle to which such restriction is applicable.

(2)(a) Any person holding a CLP-commercial learner's permit may operate a commercial motor vehicle for learning purposes upon the highways of this state if accompanied by a person who is twenty-one years of age or older, who holds a commercial driver's license valid for the class of commercial motor vehicle being operated, and who occupies the seat beside the person for the purpose of giving instruction in the operation of the commercial motor vehicle. Any person holding a CLP-commercial learner's permit may operate a commercial motor vehicle upon the highways of this state for purposes of taking a driving skills examination if accompanied by licensing staff who is designated by the director under section 60-4,149 or an examiner employed by a third-party tester certified pursuant to section 60-4,158 and who occupies the seat beside the person for the purpose of giving the examination. A person holding a CLP-commercial learner's permit shall not operate a commercial motor vehicle transporting hazardous materials. A holder of a commercial learner's permit may operate a Class A combination vehicle, Class B heavy straight vehicle, or Class C small vehicle, as appropriate.

(b) A CLP-commercial learner's permit shall only be allowed to bear any of the following endorsements: (i) P — Passenger; (ii) S — School bus; and (iii) N — Tank vehicle.

(c) A CLP-commercial learner's permit shall only be allowed to bear any of the following restrictions: (i) K — Operation of a commercial motor vehicle only in intrastate commerce; (ii) L — Operation of only a commercial motor vehicle which is not equipped with air brakes; (iii) V — Operation of a commercial motor vehicle for drivers with medical variance documentation; (iv) P — No passengers in commercial motor vehicle bus; (v) X — No cargo in commercial motor vehicle tank vehicle; (vi) M — Operation of a commercial motor vehicle that is not a Class A passenger vehicle; and (vii) N — Operation of a commercial motor vehicle that is not a Class A or Class B passenger vehicle.

(3) Except for nonresident individuals who are enrolled and taking training in a driver training school in this state, any holder of a nonresident commercial learner's permit or nonresident commercial driver's license who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued CLP-commercial learner's permit or commercial driver's license and shall surrender to the department any operator's license issued to such nonresident by any other state.

(4) Except for individuals who are enrolled and taking training in a driver training school in this state, any holder of a nondomiciled commercial learner's permit or nondomiciled commercial driver's license issued by another state who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued CLP-commercial learner's permit or commercial driver's license and shall surrender to the department any operator's license issued to such individual by any other state.

(5) An operator's license surrendered pursuant to this section may be returned to the driver after the license has been perforated with the word "VOID".

(6) Any person who operates a commercial motor vehicle upon the highways of this state in violation of this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 91; Laws 1990, LB 980, § 15; Laws 1993, LB 7, § 4; Laws 1999, LB 704, § 28; Laws 2005, LB 76, § 10; Laws 2014, LB983, § 26; Laws 2020, LB944, § 62.

**60-4,141.01 Operation of commercial motor vehicle; restrictions; prohibited acts; violation; penalty.**

(1) No person shall operate a commercial motor vehicle upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(2) No person shall operate a commercial motor vehicle transporting hazardous materials upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(3) No person shall operate a commercial motor vehicle transporting sixteen or more passengers including the driver upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(4) No person shall operate a commercial motor vehicle upon the highways of this state while he or she is disqualified under section 60-4,168.

(5) Any person operating a commercial motor vehicle in violation of subsection (1), (2), (3), or (4) of this section shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any commercial motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the commercial driver's license of such person to be revoked for a like period and (b) for each subsequent such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any commercial motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the commercial driver's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(6) For purposes of this section, out-of-service order has the same meaning as in section 75-362.

**Source:** Laws 1990, LB 980, § 16; Laws 2001, LB 38, § 36; Laws 2003, LB 562, § 12; Laws 2009, LB204, § 1.

**60-4,142 CLP-commercial learner's permit issuance; renewal.**

Any resident or nondomiciled applicant may obtain a CLP-commercial learner's permit from the department by making application to licensing staff of the department. An applicant shall present proof to licensing staff that he or she holds a valid Class O license or commercial driver's license or a foreign nondomiciled applicant shall successfully complete the requirements for the Class O license before a CLP-commercial learner's permit is issued. An appli-

cant shall also successfully complete the commercial driver's license general knowledge examination under section 60-4,155 and examinations for all previously issued endorsements as provided in 49 C.F.R. 383.25(a)(3) and 49 C.F.R. 383.153(b)(2)(vii). Upon application, the examination may be waived if the applicant presents a Nebraska commercial driver's license which is valid or has been expired for less than one year, presents a valid commercial driver's license from another state, or is renewing a CLP-commercial learner's permit. The CLP-commercial learner's permit shall be valid for a period of one hundred eighty days. The CLP-commercial learner's permit holder may renew the CLP-commercial learner's permit for an additional one hundred eighty days without retaking the general and endorsement knowledge tests. The successful applicant shall pay the fee prescribed in section 60-4,115 for the issuance or renewal of a CLP-commercial learner's permit.

**Source:** Laws 1989, LB 285, § 92; Laws 1990, LB 980, § 17; Laws 1998, LB 320, § 17; Laws 2001, LB 108, § 3; Laws 2001, LB 574, § 23; Laws 2003, LB 562, § 13; Laws 2006, LB 853, § 11; Laws 2012, LB751, § 32; Laws 2014, LB983, § 27; Laws 2016, LB311, § 17.

**60-4,143 Commercial driver's license; CLP-commercial learner's permit; issuance; restriction; surrender of other licenses.**

(1) No commercial driver's license or CLP-commercial learner's permit shall, under any circumstances, be issued to any person who has not attained the age of eighteen years.

(2) A commercial driver's license or CLP-commercial learner's permit shall not be issued to any person during the period the person is subject to a disqualification in this or any other state, while the person's operator's license is suspended, revoked, or canceled in this or any other state, or when the Commercial Driver License Information System indicates "not-certified".

(3) The department shall not issue any commercial driver's license to any person unless the person applying for a commercial driver's license first surrenders to the department all operators' licenses issued to such person by this or any other state. Any operator's license issued by another state which is surrendered to the department shall be destroyed, and the director shall send notice to the other state that the operator's license has been surrendered.

**Source:** Laws 1989, LB 285, § 93; Laws 2005, LB 76, § 11; Laws 2011, LB178, § 11; Laws 2014, LB983, § 28.

**60-4,144 Commercial driver's license; CLP-commercial learner's permit; applications; contents; application; demonstration of knowledge and skills; information and documentation required; verification.**

(1) An applicant for issuance of any original or renewal commercial driver's license or an applicant for a change of class of commercial motor vehicle, endorsement, or restriction shall demonstrate his or her knowledge and skills for operating a commercial motor vehicle as prescribed in the Motor Vehicle Operator's License Act. An applicant for a commercial driver's license shall provide the information and documentation required by this section and section 60-4,144.01. Such information and documentation shall include any additional information required by 49 C.F.R. parts 383 and 391 and also include:

(a) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate; and

(b) The names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application.

(2)(a) Before being issued a CLP-commercial learner's permit or commercial driver's license, the applicant shall provide (i) his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, (ii) two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, except that a nondomiciled applicant for a CLP-commercial learner's permit or nondomiciled commercial driver's license holder does not have to provide proof of residence in Nebraska, (iii) evidence of identity as required by this section, and (iv) a brief physical description of himself or herself.

(b) The applicant's social security number shall not be printed on the CLP-commercial learner's permit or commercial driver's license and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the certification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, (v) to furnish information to the Department of Revenue under section 77-362.02, or (vi) to furnish information to the Secretary of State for purposes of the Election Act.

(c) No person shall be a holder of a CLP-commercial learner's permit or commercial driver's license and a state identification card at the same time.

(3) Before being issued a CLP-commercial learner's permit or commercial driver's license, an applicant, except a nondomiciled applicant, shall provide proof that this state is his or her state of residence. Acceptable proof of residence is a document with the person's name and residential address within this state.

(4)(a) Before being issued a CLP-commercial learner's permit or commercial driver's license, an applicant shall provide proof of identity.

(b) The following are acceptable as proof of identity:

(i) A valid, unexpired United States passport;

(ii) A certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth;

(iii) A Consular Report of Birth Abroad issued by the United States Department of State;

(iv) A valid, unexpired permanent resident card issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services;

(v) An unexpired employment authorization document issued by the United States Department of Homeland Security;



(vi) An unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved form documenting the applicant's most recent admittance into the United States;

(vii) A Certificate of Naturalization issued by the United States Department of Homeland Security;

(viii) A Certificate of Citizenship issued by the United States Department of Homeland Security;

(ix) A driver's license or identification card issued in compliance with the standards established by the REAL ID Act of 2005, Public Law 109-13, division B, section 1, 119 Stat. 302; or

(x) Such other documents as the director may approve.

(c) If an applicant presents one of the documents listed under subdivision (b)(i), (ii), (iii), (iv), (vii), or (viii) of this subsection, the verification of the applicant's identity will also provide satisfactory evidence of lawful status.

(d) If the applicant presents one of the identity documents listed under subdivision (b)(v), (vi), or (ix) of this subsection, the verification of the identity documents does not provide satisfactory evidence of lawful status. The applicant must also present a second document from subdivision (4)(b) of this section, a document from subsection (5) of this section, or documentation issued by the United States Department of Homeland Security or other federal agencies demonstrating lawful status as determined by the United States Citizenship and Immigration Services.

(e) An applicant may present other documents as designated by the director as proof of identity. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(5)(a) Whenever a person is renewing, replacing, upgrading, transferring, or applying as a nondomiciled individual to this state for a CLP-commercial learner's permit or commercial driver's license, the Department of Motor Vehicles shall verify the citizenship in the United States of the person or the lawful status in the United States of the person.

(b) The following are acceptable as proof of citizenship or lawful status:

(i) A valid, unexpired United States passport;

(ii) A certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(iii) A Consular Report of Birth Abroad issued by the United States Department of State;

(iv) A Certificate of Naturalization issued by the United States Department of Homeland Security;

(v) A Certificate of Citizenship issued by the United States Department of Homeland Security; or

(vi) A valid, unexpired Permanent Resident Card issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services.

(6) An applicant may present other documents as designated by the director as proof of lawful status. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(7)(a) An applicant shall obtain a nondomiciled CLP-commercial driver's license or nondomiciled CLP-commercial learner's permit:

(i) If the applicant is domiciled in a foreign jurisdiction and the Federal Motor Carrier Safety Administrator has not determined that the commercial motor vehicle operator testing and licensing standards of that jurisdiction meet the standards contained in subparts G and H of 49 C.F.R. part 383; or

(ii) If the applicant is domiciled in a state that is prohibited from issuing commercial learners' permits and commercial drivers' licenses in accordance with 49 C.F.R. 384.405. Such person is eligible to obtain a nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license from Nebraska that complies with the testing and licensing standards contained in subparts F, G, and H of 49 C.F.R. part 383.

(b) An applicant for a nondomiciled CLP-commercial learner's permit and nondomiciled commercial driver's license must do the following:

(i) Complete the requirements to obtain a CLP-commercial learner's permit or a commercial driver's license under the Motor Vehicle Operator's License Act, except that an applicant domiciled in a foreign jurisdiction must provide an unexpired employment authorization document issued by the United States Citizenship and Immigration Services or an unexpired foreign passport accompanied by an approved I-94 form documenting the applicant's most recent admittance into the United States. No proof of domicile is required;

(ii) After receipt of the nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license and, for as long as the permit or license is valid, notify the Department of Motor Vehicles of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his or her driving privileges. Such adverse actions include, but are not limited to, license disqualification or disqualification from operating a commercial motor vehicle for the convictions described in 49 C.F.R. 383.51. Notifications must be made within the time periods specified in 49 C.F.R. 383.33; and

(iii) Provide a mailing address to the Department of Motor Vehicles. If the applicant is applying for a foreign nondomiciled CLP-commercial learner's permit or foreign nondomiciled commercial driver's license, he or she must provide a Nebraska mailing address and his or her employer's mailing address to the Department of Motor Vehicles.

(c) An applicant for a nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license who holds a foreign operator's license is not required to surrender his or her foreign operator's license.

(8) Any person applying for a CLP-commercial learner's permit or commercial driver's license may answer the following:

(a) Do you wish to register to vote as part of this application process?

(b) Do you wish to have a veteran designation displayed on the front of your operator's license to show that you served in the armed forces of the United States? (To be eligible you must register with the Nebraska Department of Veterans' Affairs registry.)

(c) Do you wish to include your name in the Donor Registry of Nebraska and donate your organs and tissues at the time of your death?

(d) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(e) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(9) Application for a CLP-commercial learner's permit or commercial driver's license shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the permit or license is true and correct.

(10) Any person applying for a CLP-commercial learner's permit or commercial driver's license must make one of the certifications in section 60-4,144.01 and any certification required under section 60-4,146 and must provide such certifications to the Department of Motor Vehicles in order to be issued a CLP-commercial learner's permit or a commercial driver's license.

(11) Every person who holds any commercial driver's license must provide to the department medical certification as required by section 60-4,144.01. The department may provide notice and prescribe medical certification compliance requirements for all holders of commercial drivers' licenses. Holders of commercial drivers' licenses who fail to meet the prescribed medical certification compliance requirements may be subject to downgrade.

**Source:** Laws 1989, LB 285, § 94; Laws 1992, LB 1178, § 4; Laws 1994, LB 76, § 575; Laws 1997, LB 635, § 21; Laws 1999, LB 147, § 3; Laws 1999, LB 704, § 29; Laws 2000, LB 1317, § 8; Laws 2001, LB 34, § 5; Laws 2003, LB 228, § 13; Laws 2003, LB 562, § 14; Laws 2004, LB 208, § 7; Laws 2004, LB 559, § 4; Laws 2005, LB 76, § 12; Laws 2008, LB911, § 21; Laws 2011, LB178, § 12; Laws 2011, LB215, § 19; Laws 2012, LB751, § 33; Laws 2014, LB983, § 29; Laws 2015, LB575, § 29; Laws 2016, LB47, § 3; Laws 2016, LB311, § 18; Laws 2019, LB192, § 3.

#### Cross References

**Address Confidentiality Act**, see section 42-1201.

**Donor Registry of Nebraska**, see section 71-4822.

**Election Act**, see section 32-101.

**Nebraska Department of Veterans' Affairs registry**, see section 80-414.

### **60-4,144.01 Commercial drivers' licenses; certification required; medical examiner's certificate.**

Certification shall be made as follows:

(1) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. part 391, and is required to obtain a medical examiner's certificate by 49 C.F.R. 391.45. The medical examination required in order to obtain a medical examiner's certificate shall be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners. Any nonexcepted holder of a commercial learner's permit or commercial driver's license who certifies that he or she will operate a commercial motor vehicle in nonexcepted, interstate commerce must maintain a current medical examiner's certificate and provide a copy of it to the department in order to maintain his or her medical certification status;

(2) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3 from all or part of the qualification requirements of 49 C.F.R. part

391, and is therefor not required to obtain a medical examiner's certificate by 49 C.F.R. 391.45;

(3) A person must certify that he or she operates a commercial motor vehicle only in intrastate commerce and therefor is subject to state driver qualification requirements as provided in section 75-363; or

(4) A person must certify that he or she operates a commercial motor vehicle in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

**Source:** Laws 2011, LB178, § 13; Laws 2014, LB983, § 30; Laws 2016, LB666, § 5.

**60-4,144.02 Commercial drivers' licenses; CLP-commercial learner's permit; medical examiner's certificate; department; duties; failure of driver to comply; department; duties.**

(1) For each operator of a commercial motor vehicle required to have a commercial driver's license or CLP-commercial learner's permit, the department, in compliance with 49 C.F.R. 383.73, shall:

(a) Post the driver's self-certification of type of driving under 49 C.F.R. 383.71(a)(1)(ii);

(b) Retain the medical examiner's certificate of any driver required to provide documentation of physical qualification for three years beyond the date the certificate was issued; and

(c) Post the information from the medical examiner's certificate within ten calendar days to the Commercial Driver License Information System driver record, including:

(i) The medical examiner's name;

(ii) The medical examiner's telephone number;

(iii) The date of the medical examiner's certificate issuance;

(iv) The medical examiner's license number and the state that issued it;

(v) The medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(vi) The indicator of the medical certification status, either "certified" or "not-certified";

(vii) The expiration date of the medical examiner's certificate;

(viii) The existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(ix) Any restrictions, for example, corrective lenses, hearing aid, or required to have possession of an exemption letter or Skill Performance Evaluation certificate while on duty; and

(x) The date the medical examiner's certificate information was posted to the Commercial Driver License Information System driver record.

(2) The department shall, within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as "not-certified".

(3) Within ten calendar days of receiving information from the Federal Motor Carrier Safety Administration regarding issuance or renewal of a medical variance for a driver, the department shall update the Commercial Driver License Information System driver record to include the medical variance information provided by the Federal Motor Carrier Safety Administration.

(4)(a) If a driver's medical certification or medical variance expires, or the Federal Motor Carrier Safety Administration notifies the department that a medical variance was removed or rescinded, the department shall:

(i) Notify the holder of the commercial driver's license or CLP-commercial learner's permit of his or her "not-certified" medical certification status and that the CLP-commercial learner's permit or commercial driver's license privilege will be removed from the driver's license or permit unless the driver submits a current medical certificate or medical variance or changes his or her self-certification to driving only in excepted or intrastate commerce, if permitted by the department; and

(ii) Initiate established department procedures for downgrading the license. The commercial driver's license downgrade shall be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(b) If a driver fails to provide the department with the certification contained in 49 C.F.R. 383.71(a)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to 49 C.F.R. 383.71(a)(1)(ii)(A) that he or she is operating in nonexcepted interstate commerce as required by 49 C.F.R. 383.71(h), the department shall mark that Commercial Driver License Information System driver record as "not-certified" and initiate a commercial driver's license downgrade following department procedures in accordance with subdivision (4)(a)(ii) of this section. The CLP-commercial learner's permit or commercial driver's license shall be canceled and marked as "not-certified".

**Source:** Laws 2011, LB178, § 14; Laws 2014, LB983, § 31; Laws 2016, LB666, § 6.

**60-4,144.03 Temporary CLP-commercial learner's permit or commercial driver's license; issuance; renewal.**

(1) The department shall issue a CLP-commercial learner's permit or a commercial driver's license that is temporary only to any applicant who presents documentation under section 60-4,144 that shows his or her authorized stay in the United States is temporary. A CLP-commercial learner's permit or a commercial driver's license that is temporary shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(2) A CLP-commercial learner's permit or a commercial driver's license that is temporary shall clearly indicate that it is temporary with a special notation that states the date on which it expires.

(3) A CLP-commercial learner's permit or a commercial driver's license that is temporary may be renewed only upon presentation of valid documentary evidence that the status, by which the applicant qualified for the CLP-commercial learner's permit or commercial driver's license that is temporary, has been extended by the United States Department of Homeland Security.

**Source:** Laws 2014, LB983, § 32.

**60-4,144.04 CLP-commercial learner’s permit; precondition to issuance of commercial driver’s license.**

(1) The issuance of a CLP-commercial learner’s permit is a precondition to the initial issuance of a commercial driver’s license. The issuance of a CLP-commercial learner’s permit is also a precondition to the upgrade of a commercial driver’s license if the upgrade requires a skills test, however, the CLP-commercial learner’s permit holder is not eligible to take the skills test in the first fourteen days after initial issuance of the CLP-commercial learner’s permit.

(2) The CLP-commercial learner’s permit holder is not eligible to take the commercial driver’s license skills test in the first fourteen days after initial issuance of the CLP-commercial learner’s permit.

**Source:** Laws 2014, LB983, § 33.

**60-4,145 Repealed. Laws 2014, LB983, § 69.**

**60-4,146 Application; requirements of federal law; certification.**

(1) In addition to certifying himself or herself under this section, an applicant shall also certify himself or herself under section 60-4,144.01.

(2) Upon making application pursuant to section 60-4,144 or 60-4,148.01, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is not subject to 49 C.F.R. part 391 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this subsection shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section.

(3) Upon making application pursuant to section 60-4,144 or 60-4,148.01, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that the applicant meets the qualification requirements of 49 C.F.R. part 391.

(4) Upon making application for a CLP-commercial learner’s permit or commercial driver’s license, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this subsection shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section.

(5) An applicant who certifies that he or she is not subject to 49 C.F.R. part 391 under subsection (2) or (4) of this section shall answer the following questions on the application:

(a) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(i) lost voluntary control or consciousness . . . yes . . . no

(ii) experienced vertigo or multiple episodes of dizziness or fainting . . . yes . . . no

(iii) experienced disorientation . . . yes . . . no

(iv) experienced seizures ... yes ... no

(v) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(b) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(c) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: .....

Source: Laws 1989, LB 285, § 96; Laws 1990, LB 980, § 19; Laws 1994, LB 211, § 11; Laws 1996, LB 938, § 2; Laws 1998, LB 320, § 18; Laws 1999, LB 704, § 31; Laws 2006, LB 1007, § 8; Laws 2011, LB178, § 16; Laws 2012, LB751, § 34; Laws 2014, LB983, § 34; Laws 2016, LB977, § 16; Laws 2017, LB644, § 15.

**60-4,146.01 Restricted commercial driver's license; seasonal permit; application or examiner's certificate; operation permitted; term; violation; penalty.**

(1) Any resident of this state who is a seasonal commercial motor vehicle operator for a farm-related or ranch-related service industry may apply for a restricted commercial driver's license. If the applicant is an individual, the application or examiner's certificate shall include the applicant's social security number. A restricted commercial driver's license shall authorize the holder to operate any Class B Heavy Straight Vehicle commercial motor vehicle or any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle required to be placarded pursuant to section 75-364 when the hazardous material being transported is (a) diesel fuel in quantities of one thousand gallons or less, (b) liquid fertilizers in vehicles or implements of husbandry with total capacities of three thousand gallons or less, or (c) solid fertilizers that are not transported or mixed with any organic substance within one hundred fifty miles of the employer's place of business or the farm or ranch being served.

(2) Any applicant for a restricted commercial driver's license or seasonal permit shall be eighteen years of age or older, shall have possessed a valid operator's license during the twelve-month period immediately preceding application, and shall demonstrate, in a manner to be prescribed by the director, that:

(a) If the applicant has possessed a valid operator's license for two or more years, that in the two-year period immediately preceding application the applicant:

- (i) Has not possessed more than one operator's license at one time;
- (ii) Has not been subject to any order of suspension, revocation, or cancellation of any type;
- (iii) Has no convictions involving any type or classification of motor vehicle of the disqualification offenses enumerated in sections 60-4,168 and 60-4,168.01; and
- (iv) Has no convictions for traffic law violations that are accident-connected and no record of at-fault accidents; and

(b) If the applicant has possessed a valid operator's license for more than one but less than two years, the applicant shall demonstrate that he or she meets the requirements prescribed in subdivision (a) of this subsection for the entire period of his or her driving record history.

(3)(a) Until January 1, 2022, the commercial motor vehicle operating privilege as conferred by the restricted commercial driver's license shall be valid for five years if annually revalidated by the seasonal permit which shall be valid for no more than one hundred eighty consecutive days in any twelve-month period. To revalidate the restricted commercial driver's license, the applicant shall meet the requirements of subsection (2) of this section and shall designate a time period he or she desires the commercial motor vehicle operating privilege to be valid. The time period designated by the applicant shall appear and be clearly indicated on the seasonal permit. A seasonal permit shall not be issued to any person more than once in any twelve-month period. The holder of a restricted commercial driver's license shall operate commercial motor vehicles in the course or scope of his or her employment within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served.

(b) Beginning January 1, 2022, the restricted commercial driver's license shall be valid for five years and shall clearly indicate the commercial motor vehicle operating privilege for the seasonal period of validity on the back of the restricted commercial driver's license. The seasonal period of validity shall be valid for no more than one hundred eighty consecutive days in any twelve-month period. The applicant shall designate the seasonal period of validity when making application for the restricted commercial driver's license. The holder of the restricted commercial driver's license may change the seasonal period of validity by renewing or obtaining a replacement of the restricted commercial driver's license. The holder of a restricted commercial driver's license shall operate commercial motor vehicles in the course or scope of his or her employment within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served. The department shall annually revalidate the restricted commercial driver's license to confirm that the holder of the restricted commercial driver's license meets the requirements of subsection (2) of this section. If the holder of the restricted commercial driver's license does not meet the requirements of subsection (2) of this section upon revalidation, the department shall provide notice to the holder that the restricted commercial driver's license is canceled and the holder must apply for a Class O operator's license within thirty calendar days after the date notice was sent.

(4) Any person who violates any provision of this section shall, upon conviction, be guilty of a Class III misdemeanor. In addition to any penalty imposed by the court, the director shall also revoke such person's restricted commercial driver's license and shall disqualify such person from operating any commercial motor vehicle in Nebraska for a period of five years.

(5) The Department of Motor Vehicles may adopt and promulgate rules and regulations to carry out the requirements of this section.

(6) For purposes of this section:

(a) Agricultural chemical business means any business that transports agricultural chemicals predominately to or from a farm or ranch;

(b) Farm-related or ranch-related service industry means any custom harvester, retail agricultural outlet or supplier, agricultural chemical business, or



livestock feeder which operates commercial motor vehicles for the purpose of transporting agricultural products, livestock, farm machinery and equipment, or farm supplies to or from a farm or ranch;

(c) Retail agricultural outlet or supplier means any retail outlet or supplier that transports either agricultural products, farm machinery, farm supplies, or both, predominately to or from a farm or ranch; and

(d) Seasonal commercial motor vehicle operator means any person who, exclusively on a seasonal basis, operates a commercial motor vehicle for a farm-related or ranch-related service industry.

**Source:** Laws 1993, LB 420, § 13; Laws 1996, LB 323, § 3; Laws 1997, LB 752, § 142; Laws 1998, LB 309, § 8; Laws 1999, LB 704, § 32; Laws 2019, LB270, § 36; Laws 2021, LB113, § 29.  
Operative date August 28, 2021.

**60-4,147 Repealed. Laws 1990, LB 980, § 37.**

**60-4,147.01 Driver's record; disclosure of convictions; requirements.**

The department, a prosecutor, or a court must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP-commercial learner's permit driver's conviction or commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

**Source:** Laws 2005, LB 76, § 16; Laws 2014, LB983, § 35.

**60-4,147.02 Hazardous materials endorsement; USA PATRIOT Act requirements.**

No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal regulations adopted pursuant thereto as of January 1, 2021, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

**Source:** Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5; Laws 2008, LB756, § 17; Laws 2009, LB331, § 10; Laws 2010, LB805, § 7; Laws 2011, LB212, § 6; Laws 2012, LB751, § 35; Laws 2013, LB35, § 5; Laws 2014, LB776, § 6; Laws 2015, LB313, § 6; Laws 2016, LB929, § 8; Laws 2017, LB263, § 67; Laws 2018, LB909, § 89; Laws 2019, LB79, § 16; Laws 2020, LB944, § 63; Laws 2021, LB149, § 14.  
Effective date August 28, 2021.

**60-4,147.03 Hazardous materials endorsement; application process.**

An applicant for a new, renewal, or transferred hazardous materials endorsement shall complete an application process including threat assessment, background check, fingerprints, and payment of fees as prescribed by 49 C.F.R.

1522, 1570, and 1572. Upon receipt of a determination of threat assessment from the Transportation Security Administration of the United States Department of Homeland Security or its agent, the department shall retain the application for not less than one year.

**Source:** Laws 2005, LB 76, § 18; Laws 2016, LB666, § 7.

**60-4,147.04 Hazardous materials endorsement; security threat assessment; department; powers.**

Before a hazardous materials endorsement is issued, renewed, or transferred, the Department of Motor Vehicles must receive a determination of no security threat from the Transportation Security Administration of the United States Department of Homeland Security or its agent. The Department of Motor Vehicles shall cancel any existing commercial driver's license with a hazardous materials endorsement authorizing a driver to operate a vehicle transporting hazardous materials if it has received a determination that the holder of such endorsement does not meet the standards for security threat assessment as provided in 49 C.F.R. 1572 established by the Transportation Security Administration or its agent. The department may refuse to process an application for a new, renewal, or transferred commercial driver's license with a hazardous materials endorsement if:

- (1) The applicant fails to submit to fingerprinting;
- (2) The applicant fails to submit to required information and documentations;
- (3) The applicant fails to pay the required fees;
- (4) The applicant fails to pass any element of the hazardous materials portion of the commercial driver's license examination;
- (5) The department receives a final determination of threat assessment from the Transportation Security Administration or its agent; or
- (6) The department has not received from the Transportation Security Administration or its agent an advisement regarding the applicant's security threat status.

**Source:** Laws 2005, LB 76, § 19.

**60-4,147.05 Hazardous materials endorsement; expiration; when.**

(1) A commercial driver's license with a hazardous materials endorsement expires five years after the date of issuance of a determination of no security threat.

(2) When adding a hazardous materials endorsement to an existing Nebraska commercial driver's license before the expiration date of the existing license, the expiration date of the new commercial driver's license with the hazardous materials endorsement added shall be five years from the date of the determination of threat assessment. The license shall be issued upon payment of the appropriate prorated fee prescribed in section 60-4,115 for any additional time period added. If the date of the threat assessment plus five years is earlier than the expiration date of the commercial driver's license before the hazardous materials endorsement was added, the fee for a change of class, endorsement, or restriction shall apply.

(3) The Department of Motor Vehicles shall mail out a renewal notice for each such license at least sixty days before the expiration of the license. An

applicant for renewal may initiate the renewal process after receiving such notice, but the renewal process shall be initiated at least thirty days before the expiration date in order to allow time to process the security threat assessment. The department may extend the expiration date of the endorsement for ninety days if the Transportation Security Administration of the United States Department of Homeland Security or its agent has not provided a determination of threat assessment before the expiration date. Any additional extension must be approved in advance by the designee of the Transportation Security Administration.

**Source:** Laws 2005, LB 76, § 20.

**60-4,147.06 Hazardous material endorsement; transfer from another state; procedure.**

An applicant who transfers from another state shall surrender his or her commercial driver's license with a hazardous material endorsement before the issuance of a commercial driver's license by the State of Nebraska. The renewal period established in the preceding state shall be the expiration date for the Nebraska license if a determination of threat assessment has been completed by the other state prior to issuance of the license. The Department of Motor Vehicles shall issue prorated licenses with appropriate prorated fees prescribed in section 60-4,115 to applicants transferring from another state. Applicants transferring from another state who have completed the determination of threat assessment shall not be required to undergo a determination of threat assessment until the determination of threat assessment established in the preceding state expires.

**Source:** Laws 2005, LB 76, § 21.

**60-4,148 Commercial drivers' licenses; issuance.**

(1) All commercial drivers' licenses shall be issued by the department as provided in sections 60-4,148.01 and 60-4,149. Successful applicants shall pay the fee and surcharge prescribed in section 60-4,115.

(2) Any person making application to add or remove a class of commercial motor vehicle, any endorsement, or any restriction to or from a previously issued and outstanding commercial driver's license shall pay the fee and surcharge prescribed in section 60-4,115. The fee for an original or renewal seasonal permit to revalidate the restricted commercial motor vehicle operating privilege to a previously issued and outstanding restricted commercial driver's license shall be the fee and surcharge prescribed in section 60-4,115.

**Source:** Laws 1989, LB 285, § 98; Laws 1990, LB 980, § 20; Laws 1991, LB 854, § 2; Laws 1993, LB 420, § 10; Laws 1997, LB 752, § 143; Laws 1998, LB 309, § 9; Laws 1999, LB 704, § 33; Laws 2001, LB 574, § 24; Laws 2008, LB911, § 22; Laws 2016, LB977, § 17.

**60-4,148.01 Commercial drivers' licenses; CLP-commercial learners' permits; electronic renewal and replacement; department; duties; applicant; requirements; renewal; fee and surcharge; delivery.**

(1) The department may develop and offer methods for successful applicants to obtain commercial drivers' licenses electronically and for the electronic

renewal and replacement of commercial drivers' licenses and CLP-commercial learners' permits.

(2)(a) An applicant who has successfully passed the knowledge and skills tests for a commercial driver's license pursuant to section 60-4,149 and who has a digital image and digital signature preserved in the digital system that is not more than ten years old may obtain a commercial driver's license using the preserved digital image and digital signature by electronic means in a manner prescribed by the department pursuant to this subsection.

(b) To be eligible to obtain a license pursuant to this subsection:

(i) There must have been no changes to the applicant's name since his or her most recent application for a CLP-commercial learner's permit;

(ii) The new license must not contain a hazardous materials endorsement;

(iii) The applicant must meet the requirements of section 60-4,144 and submit the information and documentation and make the certifications required under section 60-4,144; and

(iv) The applicant must satisfy any other eligibility criteria that the department may prescribe pursuant to subsection (6) of this section.

(c) The successful applicant shall pay the fee and surcharge prescribed in section 60-4,115. Upon receipt of such fee and surcharge and an application it deems satisfactory, the department shall deliver the license by mail.

(3)(a) An applicant whose commercial driver's license or CLP-commercial learner's permit expires prior to his or her seventy-second birthday and who has a digital image and digital signature preserved in the digital system may, once every ten years, renew such license or permit using the preserved digital image and digital signature by electronic means in a manner prescribed by the department pursuant to this subsection.

(b) To be eligible for renewal under this subsection:

(i) The renewal must be prior to or within one year after expiration of such license or permit;

(ii) The driving record abstract maintained in the department's computerized records must show that such license or permit is not suspended, revoked, canceled, or disqualified;

(iii) There must be no changes to the applicant's name or to the class, endorsements, or restrictions on such license or permit;

(iv) The applicant must not hold a hazardous materials endorsement or must relinquish such endorsement;

(v) The applicant must meet the requirements of section 60-4,144 and submit the information and documentation and make the certifications required under section 60-4,144; and

(vi) The applicant must satisfy any other eligibility criteria that the department may prescribe pursuant to subsection (6) of this section.

(c) Every applicant seeking renewal of his or her commercial driver's license or CLP-commercial learner's permit must apply for renewal in person at least once every ten years and have a new digital image and digital signature captured.

(d) An applicant seeking renewal under this subsection (3) shall pay the fee and surcharge prescribed in section 60-4,115. Upon receipt of such fee and

surcharge and an application it deems satisfactory, the department shall deliver the renewal license or permit by mail.

(4)(a) Any person holding a commercial driver's license or CLP-commercial learner's permit who has a digital image and digital signature not more than ten years old preserved in the digital system and who loses his or her license or permit, who requires issuance of a replacement license or permit because of a change of address, or whose license or permit is mutilated or unreadable may obtain a replacement commercial driver's license or CLP-commercial learner's permit using the preserved digital image and digital signature by electronic means in a manner prescribed by the department pursuant to this subsection.

(b) To be eligible to obtain a replacement license or permit pursuant to this subsection:

(i) There must be no changes to the applicant's name and no changes to the class, endorsements, or restrictions on such license or permit;

(ii) The applicant must meet the requirements of section 60-4,144 and submit the information and documentation and make the certifications required under section 60-4,144; and

(iii) The applicant must satisfy any other eligibility criteria that the department may prescribe pursuant to subsection (6) of this section.

(c) An application for a replacement license or permit because of a change of address shall be made within sixty days after the change of address.

(d) An applicant seeking replacement under this subsection (4) shall pay the fee and surcharge prescribed in section 60-4,115. Upon receipt of such fee and surcharge and an application it deems satisfactory, the department shall deliver the replacement license or permit by mail. The replacement license or permit shall be subject to the provisions of subsection (4) of section 60-4,150.

(5) An application to obtain a commercial driver's license or to renew or replace a commercial driver's license or CLP-commercial learner's permit because of a change of name may not be made electronically pursuant to this section and shall be made in person at a licensing station within sixty days after the change of name.

(6) The department may adopt and promulgate rules and regulations governing eligibility for the use of electronic methods for successful applicants to obtain commercial drivers' licenses and for the renewal and replacement of commercial drivers' licenses and CLP-commercial learners' permits, taking into consideration medical and vision requirements, safety concerns, and any other factors consistent with the purposes of the Motor Vehicle Operator's License Act that the director deems relevant.

**Source:** Laws 2016, LB977, § 15.

**60-4,149 Commercial driver's license; CLP-commercial learner's permit; department personnel; examination; office space; issuance; delivery; electronic submission.**

(1) The director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a commercial driver's license or a CLP-commercial learner's permit as provided in section 60-4,144. The same department personnel may be assigned to one or more counties by the director. In counties in which the county treasurer collects the fees and issues receipts, the county shall furnish office space for the administration of the license or

permit examination. Department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate or receipt. The certificate may be presented to the county treasurer within ninety days after issuance, and the county treasurer shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt which is valid for up to thirty days. If a commercial driver's license or CLP-commercial learner's permit is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If department personnel refuse to issue an issuance certificate or receipt, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(2)(a) The segments of the driving skills examination shall be administered and successfully completed in the following order: Pre-trip inspection, basic vehicle control skills, and on-road skills. If an applicant fails one segment of the driving skills examination:

- (i) The applicant cannot continue to the next segment of the examination; and
- (ii) Scores for the passed segments of the examination are only valid during initial issuance of a CLP-commercial learner's permit. If a CLP-commercial learner's permit is renewed, all three segments of the skills examination must be retaken.

(b) Passing scores for the knowledge and skills tests must meet the standards contained in 49 C.F.R. 383.135.

(3) Except as provided for in sections 60-4,157 and 60-4,158, all commercial driver's license examinations shall be conducted by department personnel designated by the director. Each successful applicant shall be issued a certificate or receipt entitling the applicant to secure a commercial driver's license. If department personnel refuse to issue such certificate or receipt, he or she shall state such cause in writing and deliver the same to the applicant. Department personnel shall not be required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(4) The successful applicant shall, within ten days after renewal or within twenty-four hours after initial issuance, pay the fee and surcharge as provided in section 60-4,115. A receipt with driving privileges which is valid for up to thirty days shall be issued. The commercial driver's license shall be delivered to the applicant as provided in section 60-4,113.

(5) In lieu of proceeding under subsection (4) of this section, the successful applicant may pay the fee and surcharge as provided in section 60-4,115 and electronically submit an application prescribed by the department in a manner prescribed by the department pursuant to section 60-4,148.01.

**Source:** Laws 1989, LB 285, § 99; Laws 1990, LB 980, § 21; Laws 1999, LB 704, § 34; Laws 2008, LB911, § 23; Laws 2011, LB215, § 20; Laws 2014, LB983, § 36; Laws 2016, LB311, § 19; Laws 2016, LB977, § 18.

**60-4,149.01 Commercial drivers' licenses; law examination; exceptions; waiver.**

(1) A commercial driver's license examiner shall not require the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for

that class of commercial motor vehicle or endorsement, if the applicant renews his or her commercial driver's license prior to its expiration or within one year after its expiration and if the applicant's driving record abstract maintained in the department's computerized records shows that his or her commercial driver's license is not suspended, revoked, canceled, or disqualified.

(2) A nonresident who holds a valid commercial driver's license from another state shall not be required to take the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the nonresident commercial driver's license holder surrenders his or her valid out-of-state commercial driver's license to licensing staff.

**Source:** Laws 1993, LB 420, § 9; Laws 1996, LB 938, § 3; Laws 1999, LB 704, § 35; Laws 2001, LB 387, § 9; Laws 2005, LB 76, § 13; Laws 2014, LB983, § 37.

**60-4,149.02 Commercial drivers' licenses; driving skills examination; exemption for driver with military commercial motor vehicle experience; conditions and limitations; applicant; certification.**

A commercial driver's license examiner shall not require the driving skills examination for a commercial motor vehicle driver with military commercial motor vehicle experience who is currently licensed at the time of his or her application for a commercial driver's license and may substitute an applicant's driving record in combination with certain driving experience. The department may impose conditions and limitations as allowed under 49 C.F.R. 383 to restrict the applicants from whom the department may accept alternative requirements for the driving skills examination authorized in section 60-4,155. Such conditions and limitations shall require at least the following:

(1) An applicant must certify that, during the two-year period immediately prior to applying for a commercial driver's license, he or she:

(a) Has not had more than one operator's license, except for a military operator's license;

(b) Has not had any operator's license suspended, revoked, or canceled;

(c) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in 49 C.F.R. 383.51(b);

(d) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in 49 C.F.R. 383.51(c);

(e) Has not had any conviction for a violation of military, state, or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident; and

(f) Has no record of an accident in which he or she was at fault; and

(2) An applicant must provide evidence and certify that he or she:

(a) Is regularly employed or was regularly employed within the last ninety days in a military position requiring operation of a commercial motor vehicle;

(b) Was exempted from the commercial driver's license requirements in 49 C.F.R. 383.3(c); and

(c) Was operating a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate, for at least two years immediately preceding discharge from the military.

**Source:** Laws 2014, LB983, § 40.

**60-4,150 Commercial driver's license; CLP-commercial learner's permit; replacement; application; delivery.**

(1) Any person holding a commercial driver's license or CLP-commercial learner's permit who loses his or her license or permit, who requires issuance of a replacement license or permit because of a change of name or address, or whose license or permit is mutilated or unreadable may obtain a replacement commercial driver's license or CLP-commercial learner's permit by filing an application pursuant to this section and by furnishing proof of identification in accordance with section 60-4,144. Any person seeking a replacement license or permit for such reasons, except because of a change of name, may also obtain a replacement license or permit by submitting an electronic application pursuant to section 60-4,148.01.

(2) An application for a replacement license or permit because of a change of name or address shall be made within sixty days after the change of name or address.

(3) A replacement commercial driver's license or CLP-commercial learner's permit issued pursuant to this section shall be delivered to the applicant as provided in section 60-4,113 after department personnel or the county treasurer collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days. Replacement commercial drivers' licenses or CLP-commercial learners' permits issued pursuant to this section shall be issued in the manner provided for the issuance of original and renewal commercial drivers' licenses or permits as provided for by section 60-4,149.

(4) Upon issuance of any replacement commercial driver's license or permit, the commercial driver's license or CLP-commercial learner's permit for which the replacement license or permit is issued shall be void. Each replacement commercial driver's license or CLP-commercial learner's permit shall be issued with the same expiration date as the license or permit for which the replacement is issued. The replacement license or permit shall also state the new issuance date.

**Source:** Laws 1989, LB 285, § 100; Laws 1990, LB 980, § 22; Laws 1993, LB 126, § 2; Laws 1998, LB 309, § 10; Laws 2001, LB 574, § 25; Laws 2005, LB 1, § 9; Laws 2008, LB911, § 24; Laws 2010, LB805, § 8; Laws 2011, LB215, § 21; Laws 2014, LB777, § 10; Laws 2014, LB983, § 38; Laws 2016, LB311, § 20; Laws 2016, LB977, § 19.

**60-4,151 Commercial driver's license; RCDL-restricted commercial driver's license; SEP-seasonal permit; CLP-commercial learner's permit; form.**

(1)(a) The commercial driver's license shall be conspicuously marked Nebraska Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The commercial driver's license shall be marked Nondomiciled if the license is a nondomiciled commercial driver's license.



(b) The form of the commercial driver's license shall also comply with section 60-4,117.

(2) The RCDL-restricted commercial driver's license shall be conspicuously marked Nebraska Restricted Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The RCDL-restricted commercial driver's license shall contain such additional information as deemed necessary by the director.

(3) The SEP-seasonal permit shall contain such information as deemed necessary by the director but shall include the time period during which the commercial motor vehicle operating privilege is effective. The SEP-seasonal permit shall be valid only when held in conjunction with an RCDL-restricted commercial driver's license.

(4) The CLP-commercial learner's permit shall be conspicuously marked Nebraska Commercial Learner's Permit and shall be, to the maximum extent practicable, tamper and forgery proof. The permit shall also be marked Non-domiciled if the permit is a nondomiciled CLP-commercial learner's permit.

**Source:** Laws 1989, LB 285, § 101; Laws 1992, LB 1178, § 5; Laws 1993, LB 420, § 11; Laws 2001, LB 34, § 6; Laws 2001, LB 574, § 26; Laws 2008, LB911, § 25; Laws 2011, LB215, § 22; Laws 2014, LB983, § 39.

#### **60-4,152 Commercial driver's license issued to minor; form.**

Any commercial driver's license issued by the Department of Motor Vehicles to a minor as defined in section 53-103.23, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the commercial driver's license of a person who is not a minor.

**Source:** Laws 1989, LB 285, § 102; Laws 1993, LB 201, § 4; Laws 2010, LB861, § 81.

#### **60-4,153 Issuance of license; department; duties.**

Prior to the issuance of any original or renewal commercial driver's license, the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, or the issuance of a CLP-commercial learner's permit, the department shall, within twenty-four hours prior to issuance if the applicant does not currently possess a valid commercial driver's license or CLP-commercial learner's permit issued by this state and within ten days prior to the issuance or reissuance for all other applicants:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license or commercial learner's permit issued by any other state, whether such license or permit or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's

license suspended, revoked, or canceled for cause in the three-year period ending on the date of application, (c) has been convicted of operation of a motor vehicle while under the influence of or while impaired by alcohol or a controlled substance, a traffic violation arising in connection with a fatal traffic accident, reckless driving, racing on the highways, failure to render aid or provide identification when involved in an accident which resulted in a fatality or personal injury, or perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law, rule, or regulation related to the operation of a motor vehicle, (d) is not eligible, or (e) is deceased.

**Source:** Laws 1989, LB 285, § 103; Laws 1999, LB 704, § 36; Laws 2011, LB178, § 17; Laws 2014, LB983, § 41.

**60-4,154 Issuance of license or permit; director notify Commercial Driver License Information System; department; post information.**

(1) Prior to the issuance of any original or renewal commercial driver's license, the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, or the issuance of a CLP-commercial learner's permit, the director shall notify the Commercial Driver License Information System of the issuance and shall provide the applicant's name, social security number, and any other required information to the operator of the system.

(2) The department shall post information from the medical examiner's certificate to the Commercial Driver License Information System in accordance with section 60-4,144.02 and 49 C.F.R. 383.73.

**Source:** Laws 1989, LB 285, § 104; Laws 2011, LB178, § 18; Laws 2014, LB983, § 42.

**60-4,155 Department; duties; rules and regulations.**

The Department of Motor Vehicles shall establish standards and requirements for the testing of applicants for commercial drivers' licenses, endorsements, and restrictions. The standards and requirements developed by the department for written knowledge and driving skills examinations for commercial drivers' licenses shall substantially comply with the requirements of the Commercial Driver's License Standards, 49 C.F.R. part 383, subparts G and H. The department may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 1989, LB 285, § 105; Laws 2019, LB270, § 37.

**60-4,156 Repealed. Laws 2014, LB983, § 69.**

**60-4,157 Driving skills examination; waiver based on third-party tester; licensure in another state; report of examination results.**

(1) A commercial driver's license examiner may waive the driving skills examination when an applicant presents evidence, on a form to be prescribed by the director, that he or she has successfully passed a driving skills examination administered by a third-party tester.

(2) A third-party skills test examiner may administer a driving skills examination to an applicant who has taken training in this state but is to be licensed in another state. The driving skills examination results shall be reported by the

third-party skills test examiner to the department. The department shall transmit electronically the driving skills examination results directly from this state to the licensing state in an efficient and secure manner to be determined by the director.

**Source:** Laws 1989, LB 285, § 107; Laws 2014, LB983, § 43; Laws 2021, LB113, § 30.

Operative date August 28, 2021.

**60-4,158 Third-party testers; applicant; criminal history record check; fingerprints; rules and regulations; fees; violation; penalty.**

(1) The director shall adopt and promulgate rules and regulations governing the certification of third-party testers by the department. Such rules and regulations shall substantially comply with the requirements of 49 C.F.R. 383.75. A third-party skills test examiner employed by a certified third-party tester is not required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(2)(a) An applicant to be certified as a third-party skills test examiner shall provide fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall undertake a search for criminal history record information relating to such applicant, including transmittal of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information shall include information concerning the applicant from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report to the department that includes the criminal history record information concerning the applicant. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(b) A third-party skills test examiner shall be subject to a national criminal history record information check.

(c) The department shall maintain a record of the results of the criminal background check and third-party skills test examiner test training and certification of all third-party skills test examiners.

(d) The department shall rescind the certification to administer commercial driver's license tests of all third-party skills test examiners who:

(i) Do not successfully complete the required refresher training every four years; or

(ii) Do not pass a national criminal history record information check. Criteria for not passing the criminal background check must include at least the following:

(A) Any felony conviction within the last ten years; or

(B) Any conviction involving fraudulent activities.

(3) A certification to conduct third-party testing shall be valid for two years, and the department shall charge a fee of one hundred dollars to issue or renew the certification of any third-party tester. The department shall remit the fees collected to the State Treasurer for credit to the General Fund.

(4) Any third-party tester who violates any of the rules and regulations adopted and promulgated pursuant to this section shall be subject to having his or her certification revoked by the department.

**Source:** Laws 1989, LB 285, § 108; Laws 1999, LB 704, § 37; Laws 2014, LB983, § 44.

**60-4,159 Licensee; permit holder; convictions; disqualifications; notification required; violation; penalty.**

(1) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department shall, within ten days after the date of conviction, notify the department of all convictions for violations of state law or local ordinance related to motor vehicle traffic control, except parking violations, when such convictions occur in another state.

(2) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department who is convicted of violating any state law or local ordinance related to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(3) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department whose commercial driver's license or CLP-commercial learner's permit is suspended, revoked, or canceled by any state, who loses the privilege to operate a commercial motor vehicle in any state for any period, or who is disqualified from operating a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(4) Any person who fails to provide the notifications required in subsection (1), (2), or (3) of this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 109; Laws 2005, LB 76, § 14; Laws 2014, LB983, § 45.

**60-4,160 Refusal or denial of application; notice; appeal.**

Written notice shall be delivered to any applicant whose application for a commercial driver's license or CLP-commercial learner's permit is refused or denied for cause. The applicant shall have a right to an immediate appeal to the director upon receipt of such notice. The director shall hear the appeal and render a prompt finding not later than ten days after receipt of the appeal.

**Source:** Laws 1989, LB 285, § 110; Laws 2014, LB983, § 46.

**60-4,161 Employment as driver; application; contents; violation; penalty.**

(1) Any person who applies for employment as a driver of a commercial motor vehicle shall provide every prospective employer, at the time of application, with the following information for the ten-year period preceding the date of application:

(a) A list of the names and addresses of the applicant's previous employers for whom the applicant was a driver of a commercial motor vehicle;

(b) The dates the applicant was employed by each employer; and

(c) The reason for leaving that employment.

(2) The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information. Any person who fails to provide the information required by this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 111.

**60-4,162 Employment as driver; employer; duties; violation; penalty.**

(1) Each employer shall require prospective applicants for employment as a driver of a commercial motor vehicle to provide the information required by section 60-4,161.

(2) No employer may knowingly allow, require, permit, or authorize a driver to operate a commercial motor vehicle in the United States in any of the following circumstances:

(a) During any period in which the driver does not have a current commercial learner's permit or commercial driver's license or does not have a commercial learner's permit or commercial driver's license with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver's commercial learner's permit or commercial driver's license;

(b) During any period in which the driver has a commercial learner's permit or commercial driver's license disqualified by a state, has lost the right to operate a commercial motor vehicle in a state, or has been disqualified from operating a commercial motor vehicle;

(c) During any period in which the driver has more than one commercial learner's permit or commercial driver's license;

(d) During any period in which the driver, the commercial motor vehicle he or she is operating, or the motor carrier operation is subject to an out-of-service order; or

(e) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.

(3) Any employer who violates this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 112; Laws 2002, LB 499, § 2; Laws 2014, LB983, § 47.

**60-4,163 Alcoholic liquor; prohibited operation; effect.**

No person shall operate or be in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body. Any person who operates or is in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body or who refuses to submit to a test or tests to determine the alcoholic content of his or her blood or breath shall be placed out of service for twenty-four hours, shall be subject to disqualification as provided in sections 60-4,167 and 60-4,168, and shall be subject to prosecution for any violation of sections 60-6,196 and 60-6,197.

Any order to place a person out of service for twenty-four hours issued by a law enforcement officer shall be made pursuant to 49 C.F.R. 392.5(c) adopted pursuant to section 75-363.

**Source:** Laws 1989, LB 285, § 113; Laws 1993, LB 191, § 1; Laws 1993, LB 370, § 91; Laws 2001, LB 773, § 12; Laws 2006, LB 1007, § 9.

**60-4,164 Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.**

(1) Any person who operates or is in the actual physical control of a commercial motor vehicle upon a highway in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the amount of alcoholic content in his or her blood or breath.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village who, after stopping or detaining the operator of any commercial motor vehicle, has reasonable grounds to believe that the operator was driving or in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body may require such operator to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the alcoholic content of such blood or breath.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person who operates or has in his or her actual physical control a commercial motor vehicle upon a highway in this state to submit to a preliminary breath test of his or her breath for alcoholic content if the officer has reasonable grounds to believe that such person has any alcoholic liquor in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any such person who refuses to submit to a preliminary breath test shall be placed under arrest and shall be guilty of a Class V misdemeanor. Any person arrested for refusing to submit to a preliminary breath test or any person who submits to a preliminary breath test the results of which indicate the presence of any alcoholic liquor in such person's body may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the alcoholic content.

(4) Any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses the presence of any alcoholic liquor in his or her body shall be placed out of service for twenty-four hours by the law enforcement officer.

(5) Any person operating or in the actual physical control of a commercial motor vehicle who refuses to submit to a chemical test or tests of his or her blood or breath or any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses an alcoholic concentration of: (a) Four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (b) four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed out of service for twenty-four hours by the law enforcement officer, and the officer shall forward to the director a sworn report. The director may accept a sworn report submitted electronically. The report shall state that the person was operating or in the actual physical control of a commercial motor vehicle, was requested to submit to the required chemical test or tests, and refused to submit to the required chemical test or tests or submitted to the required

chemical test or tests and possessed an alcohol concentration at or in excess of that specified by this subsection.

(6) Any person involved in a commercial motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood or breath by any law enforcement officer if the officer has reasonable grounds to believe that such person was driving or was in actual physical control of a commercial motor vehicle on a highway in this state while under the influence of alcoholic liquor at the time of the accident. A person involved in a commercial motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test or tests of his or her blood or breath by reason of leaving this state. If the person refuses a test or tests under this section and leaves the state for any reason following an accident, he or she shall remain subject to this section upon return.

**Source:** Laws 1989, LB 285, § 114; Laws 1992, LB 872, § 6; Laws 1993, LB 191, § 2; Laws 1996, LB 323, § 6; Laws 2011, LB667, § 31.

**60-4,164.01 Alcoholic liquor; blood test; withdrawing requirements; damages; liability.**

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 60-4,164. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-4,164 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

**Source:** Laws 1997, LB 210, § 4; Laws 2000, LB 819, § 75; Laws 2000, LB 1115, § 6; Laws 2007, LB296, § 231.

**Cross References**

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

**60-4,165 Alcoholic liquor; rights of person tested.**

The law enforcement officer who requires a chemical test or tests pursuant to section 60-4,164 may direct whether the test or tests will be of blood or breath. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests are deemed appropriate in addition to and following the test or tests administered at the direction of the law enforcement officer. If the officer refuses to permit such additional test or tests to be taken, the original test or tests shall not be competent evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the law enforcement officer shall be made available to him or her.

**Source:** Laws 1989, LB 285, § 115; Laws 1993, LB 191, § 3; Laws 1996, LB 323, § 7.

**60-4,166 Alcoholic liquor; chemical test; unconscious person; effect on consent.**

Any person who is unconscious or who is in a condition rendering him or her incapable of refusal to submit to a chemical test or tests pursuant to section 60-4,164 shall be deemed not to have withdrawn the consent provided for in such section, and a chemical test or tests may be given.

**Source:** Laws 1989, LB 285, § 116; Laws 1993, LB 191, § 4.

**60-4,167 Alcoholic liquor; officer's report; notice of disqualification; hearing before director; procedure.**

Upon receipt of a law enforcement officer's sworn report provided for in section 60-4,164, the director shall serve the notice of disqualification to the person who is the subject of the report by regular United States mail to the person's last-known address appearing on the records of the director. If the address on the director's records differs from the address on the arresting officer's report, the notice of disqualification shall be sent to both addresses. The notice of disqualification shall contain a statement explaining the operation of the disqualification procedure and the rights of the person. The director shall also provide to the person a self-addressed envelope and a petition form which the person may use to request a hearing before the director to contest the disqualification. The petition form shall clearly state on its face that the petition must be completed and delivered to the department or postmarked within ten days after receipt or the person's right to a hearing to contest the disqualification will be foreclosed. The director shall prescribe and approve the form for the petition, the self-addressed envelope, and the notice of disqualification. If not contested, the disqualification shall automatically take effect thirty days after the date of mailing of the notice of disqualification by the director. Any chemical test or tests made under section 60-4,164, if made in conformity with the requirements of section 60-6,201, shall be competent evidence of the alcoholic content of such person's blood or breath. The commercial driver's license or commercial learner's permit of the person who is the subject of the report shall be automatically disqualified upon the expiration of thirty days after the date of the mailing of the notice of disqualification by the director. The director shall conduct the hearing in the county in which the violation occurred or in any county agreed to by the parties. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by



regular United States mail postmarked at least seven days prior to the hearing date.

After granting the petitioner an opportunity to be heard on such issue, if it is not shown to the director that the petitioner's refusal to submit to such chemical test or tests was reasonable or unless it is shown to the director that the petitioner was not operating or in the actual physical control of a commercial motor vehicle with an alcoholic concentration in his or her blood or breath equal to or in excess of that specified in subsection (5) of section 60-4,164, the director shall enter an order pursuant to section 60-4,169 revoking the petitioner's commercial driver's license or commercial learner's permit and the petitioner's privilege to operate a commercial motor vehicle in this state and disqualifying the person from operating a commercial motor vehicle for the period specified by section 60-4,168.

**Source:** Laws 1989, LB 285, § 117; Laws 1993, LB 191, § 5; Laws 1993, LB 370, § 92; Laws 1996, LB 323, § 8; Laws 2012, LB751, § 36; Laws 2014, LB983, § 48.

#### **60-4,167.01 Alcoholic liquor; disqualification decision; director; duties.**

(1) The director shall reduce the decision disqualifying a commercial driver from operating a commercial motor vehicle pursuant to a hearing under section 60-4,167 to writing and the director shall notify the person in writing of the disqualification within seven days following a hearing. The decision shall set forth the period of disqualification and be served by mailing it to such person by regular United States mail to the address provided to the director at the hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not disqualify the commercial driver from operating a commercial motor vehicle, the director shall notify the person in writing of the decision within seven days following a hearing. The notice shall be mailed by regular United States mail as provided in subsection (1) of this section. No reinstatement fee shall be charged.

**Source:** Laws 1996, LB 323, § 9; Laws 2012, LB751, § 37.

#### **60-4,167.02 Alcoholic liquor; disqualification; appeal.**

Any person who feels himself or herself aggrieved because of such disqualification pursuant to a hearing under section 60-4,167 may appeal to the district court of the county where the alleged violation occurred in accordance with the Administrative Procedure Act. The appeal shall not suspend the disqualification unless a stay is allowed by the court pending a final determination of the review. If a stay is allowed and the final judgment of the court finds against the person appealing, the period of disqualification shall commence at the time of the final judgment of the court for the full period of the time of disqualification.

**Source:** Laws 1996, LB 323, § 10.

#### **Cross References**

**Administrative Procedure Act**, see section 84-920.

**60-4,168 Disqualification; when.**

(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from operating a commercial motor vehicle for one year upon his or her first conviction, after April 1, 1992, in this or any other state for:

(a) Operating a commercial motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance or, beginning September 30, 2005, operating any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance;

(b) Operating a commercial motor vehicle in violation of section 60-4,163 or 60-4,164;

(c) Leaving the scene of an accident involving a commercial motor vehicle operated by the person or, beginning September 30, 2005, leaving the scene of an accident involving any motor vehicle operated by the person;

(d) Using a commercial motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section or, beginning September 30, 2005, using any motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section;

(e) Beginning September 30, 2005, operating a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from operating a commercial motor vehicle; or

(f) Beginning September 30, 2005, causing a fatality through the negligent or criminal operation of a commercial motor vehicle.

(2) Except as provided in subsection (3) of this section, if any of the offenses described in subsection (1) of this section occurred while a person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from operating a commercial motor vehicle for three years.

(3) A person shall be disqualified from operating a commercial motor vehicle for life if, after April 1, 1992, he or she:

(a) Is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents;

(b) Beginning September 30, 2005, used a commercial motor vehicle in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance; or

(c) Used a commercial motor vehicle in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11), as such section existed on January 1, 2021.

(4)(a) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a commercial motor vehicle.

(b) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a motor vehicle other than a commercial motor vehicle if the convictions have resulted in the revocation, cancellation, or suspension of the person's operator's license or driving privileges.

(5)(a) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a highway-rail grade crossing shall be disqualified for the period of time specified in subdivision (5)(b) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b)(i) A person shall be disqualified for not less than sixty days if the person is convicted of a first violation described in this subsection.

(ii) A person shall be disqualified for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second violation described in this subsection in separate incidents.

(iii) A person shall be disqualified for not less than one year if, during any three-year period, the person is convicted of a third or subsequent violation described in this subsection in separate incidents.

(6) A person shall be disqualified from operating a commercial motor vehicle for at least one year if, on or after July 8, 2015, the person has been convicted of fraud related to the issuance of his or her CLP-commercial learner's permit or commercial driver's license.

(7) If the department receives credible information that a CLP-commercial learner's permit holder or a commercial driver's license holder is suspected, but has not been convicted, on or after July 8, 2015, of fraud related to the issuance of his or her CLP-commercial learner's permit or commercial driver's license, the department must require the driver to retake the skills and knowledge tests. Within thirty days after receiving notification from the department that retesting is necessary, the affected CLP-commercial learner's permit holder or commercial driver's license holder must make an appointment or otherwise schedule to take the next available test. If the CLP-commercial learner's permit holder or commercial driver's license holder fails to make an appointment within thirty days, the department must disqualify his or her CLP-commercial learner's permit or commercial driver's license. If the driver fails either the knowledge or skills test or does not take the test, the department must

disqualify his or her CLP-commercial learner's permit or commercial driver's license. If the holder of a CLP-commercial learner's permit or commercial driver's license has had his or her CLP-commercial learner's permit or commercial driver's license disqualified, he or she must reapply for a CLP-commercial learner's permit or commercial driver's license under department procedures applicable to all applicants for a CLP-commercial learner's permit or commercial driver's license.

(8) For purposes of this section, controlled substance has the same meaning as in section 28-401.

(9) For purposes of this section, conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law, in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(10) For purposes of this section, serious traffic violation means:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140;

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person;

(f) Beginning September 30, 2005, operating a commercial motor vehicle without a commercial driver's license;

(g) Beginning September 30, 2005, operating a commercial motor vehicle without a commercial driver's license in the operator's possession;

(h) Beginning September 30, 2005, operating a commercial motor vehicle without the proper class of commercial driver's license and any endorsements, if required, for the specific vehicle group being operated or for the passengers or type of cargo being transported on the vehicle;

(i) Beginning October 27, 2013, texting while driving as described in section 60-6,179.02; and

(j) Using a handheld mobile telephone as described in section 60-6,179.02.

(11) Each period of disqualification imposed under this section shall be served consecutively and separately.

**Source:** Laws 1989, LB 285, § 118; Laws 1990, LB 980, § 24; Laws 1993, LB 191, § 6; Laws 1993, LB 370, § 93; Laws 1996, LB 323, § 11; Laws 2001, LB 773, § 13; Laws 2002, LB 499, § 3; Laws 2003, LB 562, § 16; Laws 2005, LB 76, § 15; Laws 2012, LB751, § 38; Laws 2014, LB983, § 49; Laws 2016, LB311, § 21; Laws 2016,

LB666, § 8; Laws 2017, LB263, § 68; Laws 2020, LB944, § 64;  
 Laws 2021, LB149, § 15.  
 Effective date August 28, 2021.

Convictions or adjudications in other states for driving under the influence of drugs or alcohol apply to this section. *Klug v. Nebraska Dept. of Motor Vehicles*, 291 Neb. 235, 864 N.W.2d 676 (2015).

Prosecuting an individual for driving under the influence after the individual's commercial driver's license has been already

disqualified does not violate double jeopardy. *State v. Arterburn*, 276 Neb. 47, 751 N.W.2d 157 (2008).

The Legislature intended this section to be a civil sanction, and the statute is not so punitive in its purpose or effect as to negate the Legislature's intent. *State v. Arterburn*, 276 Neb. 47, 751 N.W.2d 157 (2008).

**60-4,168.01 Out-of-service order; violation; disqualification; when.**

(1) Except as provided in subsection (2) of this section, a person who is convicted of violating an out-of-service order while operating a commercial motor vehicle which is transporting nonhazardous materials shall be subject to disqualification as follows:

(a) A person shall be disqualified from operating a commercial motor vehicle for a period of at least one hundred eighty days but no more than one year upon a court conviction for violating an out-of-service order;

(b) A person shall be disqualified from operating a commercial motor vehicle for a period of at least two years but no more than five years upon a second court conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period; and

(c) A person shall be disqualified from operating a commercial motor vehicle for a period of at least three years but no more than five years upon a third or subsequent court conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period.

(2) A person who is convicted of violating an out-of-service order while operating a commercial motor vehicle which is transporting hazardous materials required to be placarded pursuant to section 75-364 or while operating a commercial motor vehicle designed or used to transport sixteen or more passengers, including the driver, shall be subject to disqualification as follows:

(a) A person shall be disqualified from operating a commercial motor vehicle for a period of at least one hundred eighty days but no more than two years upon conviction for violating an out-of-service order; and

(b) A person shall be disqualified from operating a commercial motor vehicle for a period of at least three years but no more than five years upon a second or subsequent conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period.

(3) For purposes of this section, out-of-service order has the same meaning as in section 75-362.

(4) Each period of disqualification imposed under this section shall be served consecutively and separately.

**Source:** Laws 1996, LB 323, § 5; Laws 2003, LB 562, § 17; Laws 2009, LB204, § 2; Laws 2017, LB263, § 69.

**60-4,168.02 Federal disqualification; effect.**

Beginning September 30, 2005, any federal disqualification of a Nebraska licensed operator imposed in accordance with 49 C.F.R. 383.52 transmitted by

the Federal Motor Carrier Safety Administration to the director shall become part of the operator's record maintained by the Department of Motor Vehicles.

**Source:** Laws 2003, LB 562, § 18.

**60-4,169 Revocation; when.**

Whenever it comes to the attention of the director that any person when operating a motor vehicle has, based upon the records of the director, been convicted of or administratively determined to have committed an offense for which disqualification is required pursuant to section 60-4,146.01, 60-4,168, or 60-4,168.01, the director shall summarily revoke (1) the commercial driver's license or CLP-commercial learner's permit and privilege of such person to operate a commercial motor vehicle in this state or (2) the privilege, if such person is a nonresident, of operating a commercial motor vehicle in this state. Any revocation ordered by the director pursuant to this section shall commence on the date of the signing of the order of revocation or the date of the release of such person from the jail or a Department of Correctional Services adult correctional facility, whichever is later, unless the order of the court requires the jail time and the revocation to run concurrently.

**Source:** Laws 1989, LB 285, § 119; Laws 1993, LB 31, § 19; Laws 1993, LB 420, § 12; Laws 1996, LB 323, § 12; Laws 2001, LB 38, § 37; Laws 2010, LB805, § 9; Laws 2014, LB983, § 50.

**60-4,170 Revocation; notice; failure to surrender license or permit; violation; penalty; appeal.**

Within ten days after the revocation provided for by section 60-4,169, the director shall notify in writing the person whose commercial driver's license, CLP-commercial learner's permit, or privilege to operate a commercial motor vehicle has been revoked that such license, permit, or privilege has been revoked. Such notice shall: (1) Contain a list of the disqualifying convictions or administrative determinations upon which the director relies as his or her authority for the revocation, with the dates on which such disqualifying violations occurred and the dates of such convictions or administrative determinations and the trial courts or administrative agencies in which such convictions or administrative determinations were rendered; (2) state the term of revocation; (3) include a demand that the commercial driver's license or CLP-commercial learner's permit be returned to the director immediately; and (4) be served by mailing the notice to such person by regular United States mail to the address of such person. Any person refusing or failing to surrender a commercial driver's license or CLP-commercial learner's permit as required by this section shall, upon conviction, be guilty of a Class III misdemeanor.

Any person who feels himself or herself aggrieved because of a revocation pursuant to section 60-4,169 may appeal from such revocation in the manner set forth in section 60-4,105. Such appeal shall not suspend the order of revocation unless a stay of such revocation shall be allowed by the court pending a final determination of the review. The license of any person claiming to be aggrieved shall not be restored to such person, in the event of a final judgment of a court against such person, until the full time of revocation, as fixed by the director, has elapsed.

**Source:** Laws 1989, LB 285, § 120; Laws 1999, LB 704, § 38; Laws 2012, LB751, § 39; Laws 2014, LB983, § 51.

**60-4,171 Issuance of Class O or M operator's license; reinstatement of commercial driver's license or CLP-commercial learner's permit; when.**

(1) Following any period of revocation ordered by a court, a resident who has had a commercial driver's license or CLP-commercial learner's permit revoked pursuant to section 60-4,169 may apply for a Class O or M operator's license.

(2) Any person who has had his or her commercial driver's license or CLP-commercial learner's permit revoked pursuant to section 60-4,169 may, at the end of such revocation period, apply to have his or her eligibility for a commercial driver's license or CLP-commercial learner's permit reinstated. The applicant shall (a) apply to the department and meet the requirements of section 60-4,144, (b) take the commercial driver's license knowledge and driving skills examinations prescribed pursuant to section 60-4,155 if applying for a commercial driver's license, (c) certify pursuant to section 60-4,144.01 and meet the applicable medical requirements for such certification, (d) be subject to a check of his or her driving record, (e) pay the fees specified in section 60-4,115 and a reinstatement fee as provided in section 60-499.01, and (f) surrender any operator's license issued pursuant to subsection (1) of this section.

**Source:** Laws 1989, LB 285, § 121; Laws 1993, LB 420, § 14; Laws 1993, LB 491, § 14; Laws 1997, LB 752, § 144; Laws 1999, LB 704, § 39; Laws 2001, LB 38, § 38; Laws 2001, LB 574, § 27; Laws 2011, LB178, § 19; Laws 2014, LB983, § 52.

**60-4,172 Nonresident licensee or permit holder; conviction within state; director; duties.**

(1) Within ten days after receiving an abstract of conviction of any nonresident who holds a commercial learner's permit or commercial driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident who holds a commercial learner's permit or commercial driver's license and the Commercial Driver License Information System of such conviction.

(2)(a) Within ten days after disqualifying a nonresident who holds a commercial learner's permit or commercial driver's license or canceling, revoking, or suspending the commercial learner's permit or commercial driver's license held by a nonresident, for a period of at least sixty days, the department shall notify the driver licensing authority which licensed the nonresident and the Commercial Driver License Information System of such action.

(b) The notification shall include both the disqualification and the violation that resulted in the disqualification, cancellation, revocation, or suspension. The notification and the information it provides shall be recorded on the driver's record.

(3) Within ten days after receiving an abstract of conviction of any nonresident who holds a commercial learner's permit or commercial driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in any type of motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident and the Commercial Driver License Information System of such conviction.

(4) Within ten days after receiving an abstract of conviction of any nonresident who holds a driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident.

**Source:** Laws 1989, LB 285, § 122; Laws 2003, LB 562, § 19; Laws 2014, LB983, § 53.

(i) COMMERCIAL DRIVER TRAINING SCHOOLS

**60-4,173 Terms, defined.**

For purposes of sections 60-4,173 to 60-4,179:

(1) Driver training school or school means a business enterprise conducted by an individual, association, partnership, limited liability company, or corporation or a public or private educational facility which educates or trains persons to operate or drive motor vehicles or which furnishes educational materials to prepare an applicant for an examination by the state for an operator's license, provisional operator's permit, or LPD-learner's or LPE-learner's permit and which charges consideration or tuition for such service or materials; and

(2) Instructor means any person who operates a driver training school or who teaches, conducts classes, gives demonstrations, or supervises practical training of persons learning to operate or drive motor vehicles in connection with operation of a driver training school.

**Source:** Laws 1967, c. 380, § 1, p. 1191; R.S.1943, (1988), § 60-409.06; Laws 1989, LB 285, § 123; Laws 1993, LB 121, § 384; Laws 1998, LB 320, § 19; Laws 2008, LB279, § 1.

**60-4,174 Director; duties; rules and regulations; Commissioner of Education; assist.**

(1) The director shall adopt and promulgate such rules and regulations for the administration and enforcement of sections 60-4,173 to 60-4,179 as are necessary to protect the public. The director or his or her authorized representative shall examine applicants for Driver Training School and Instructor's Licenses, license successful applicants, and inspect school facilities and equipment. The director shall administer and enforce such sections and may call upon the Commissioner of Education for assistance in developing and formulating appropriate rules and regulations.

(2) Rules and regulations which have been adopted and promulgated pursuant to this section prior to July 18, 2008, shall remain in effect and be applicable to all driver training schools and instructors until such time as new rules and regulations are adopted and promulgated.

**Source:** Laws 1967, c. 380, § 2, p. 1192; R.S.1943, (1988), § 60-409.07; Laws 1989, LB 285, § 124; Laws 2008, LB279, § 2.

**60-4,175 School; license; requirements.**

No driver training school shall be established nor any existing school be continued unless such school applies for and obtains from the director a license in the manner and form prescribed by the director. Rules and regulations



adopted and promulgated by the director shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond, or other security in such sum and with such provisions as the director deems necessary to protect adequately the interests of the public, and such other matters as the director may prescribe.

**Source:** Laws 1967, c. 380, § 3, p. 1192; R.S.1943, (1988), § 60-409.08; Laws 1989, LB 285, § 125; Laws 2008, LB279, § 3.

**60-4,176 Instructor; license; requirements.**

(1) No person shall act as an instructor unless such person applies for and obtains from the director a license in the manner and form prescribed by the director. If the applicant is an individual, the application form shall include the applicant's social security number.

(2) Rules and regulations adopted and promulgated by the director shall state the requirements for an instructor's license, including requirements concerning moral character, physical condition, knowledge of the courses of instruction, knowledge of the motor vehicle laws and safety principles, previous personal and employment records, and such other matters as the director may prescribe for the protection of the public.

**Source:** Laws 1967, c. 380, § 4, p. 1193; R.S.1943, (1988), § 60-409.09; Laws 1989, LB 285, § 126; Laws 1997, LB 752, § 145.

**60-4,177 Licenses; renewal; expiration; fees.**

All licenses issued under sections 60-4,175 and 60-4,176 shall expire on the last day of June in the year following their issuance and may be renewed upon application to the director as prescribed by the rules and regulations. Each application for a new or renewal school license shall be accompanied by a fee of fifty dollars, and each application for a new or renewal instructor's license shall be accompanied by a fee of ten dollars. The license fees shall be placed in the state treasury and by the State Treasurer credited to the General Fund. No license fee shall be refunded in the event that the license is rejected, suspended, or revoked.

**Source:** Laws 1967, c. 380, § 5, p. 1193; Laws 1982, LB 928, § 47; R.S.1943, (1988), § 60-409.10; Laws 1989, LB 285, § 127.

**60-4,178 Licenses; cancel, suspend, or revoke; procedure; appeal.**

The director may cancel, suspend, revoke, or refuse to issue or renew a school or instructor's license in any case when he or she finds the licensee or applicant has not complied with or has violated any of the provisions of sections 60-4,173 to 60-4,179 or any rule or regulation adopted and promulgated by the director under such sections. A suspended or revoked license shall be returned to the director by the licensee, and its holder shall not be eligible to apply for a license under such sections until twelve months have elapsed since the date of such suspension or revocation. Any action taken by the director to

cancel, suspend, revoke, or refuse to issue or renew a license shall comply with the Administrative Procedure Act.

**Source:** Laws 1967, c. 380, § 6, p. 1193; Laws 1988, LB 352, § 104; R.S.1943, (1988), § 60-409.11; Laws 1989, LB 285, § 128; Laws 1999, LB 704, § 40.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**60-4,179 Violations; penalty.**

Any person, firm, or corporation violating any provision of sections 60-4,175 to 60-4,178 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1967, c. 380, § 8, p. 1194; Laws 1977, LB 39, § 77; R.S.1943, (1988), § 60-409.13; Laws 1989, LB 285, § 129.

(j) STATE IDENTIFICATION CARDS

**60-4,180 State identification card; issuance authorized; prior cards; invalid.**

Any person who is a resident of this state may obtain a state identification card with a digital image of the person included. State identification cards shall be issued in the manner provided in section 60-4,181. Any identification card issued under prior law prior to January 1, 1990, shall be invalid after such date.

**Source:** Laws 1989, LB 284, § 3; Laws 1993, LB 201, § 5; Laws 2001, LB 574, § 28; Laws 2014, LB777, § 11.

**Cross References**

**Application**, see section 60-484.  
**Duplicate or replacement card**, see section 60-4,120.  
**Expiration**, see section 60-490.  
**Photograph affixed to card**, see section 60-4,119.  
**Prohibited acts**, see section 60-491.  
**Renewal procedure**, see section 60-4,122.  
**Violations**, penalties, see section 60-491.

**60-4,181 State identification cards; issuance; requirements; form; delivery; cancellation.**

(1) Each applicant for a state identification card shall provide the information and documentation required by sections 60-484 and 60-484.04. The form of the state identification card shall comply with section 60-4,117. The applicant shall present an issuance certificate to the county treasurer for a state identification card. Department personnel or the county treasurer shall collect the fee and surcharge as prescribed in section 60-4,115 and issue a receipt to the applicant which is valid up to thirty days. The state identification card shall be delivered to the applicant as provided in section 60-4,113.

(2) The director may summarily cancel any state identification card, and any judge or magistrate may order a state identification card canceled in a judgment of conviction, if the application or information presented by the applicant contains any false or fraudulent statements which were deliberately and knowingly made as to any matter material to the issuance of the card or if the application or information presented by the applicant does not contain required or correct information. Any state identification card so obtained shall be void from the date of issuance. Any judgment of conviction ordering cancellation of

a state identification card shall be transmitted to the director who shall cancel the card.

(3) No person shall be a holder of a state identification card and an operator's license at the same time.

**Source:** Laws 1989, LB 284, § 6; Laws 1989, LB 285, § 130; Laws 1992, LB 1178, § 6; Laws 1993, LB 491, § 15; Laws 1994, LB 76, § 576; Laws 1995, LB 467, § 14; Laws 1996, LB 1073, § 2; Laws 1997, LB 21, § 1; Laws 1997, LB 635, § 22; Laws 1998, LB 309, § 11; Laws 1999, LB 147, § 4; Laws 1999, LB 704, § 41; Laws 2000, LB 1317, § 9; Laws 2001, LB 34, § 7; Laws 2001, LB 574, § 29; Laws 2003, LB 228, § 14; Laws 2004, LB 559, § 5; Laws 2008, LB911, § 26; Laws 2011, LB215, § 23; Laws 2016, LB311, § 22; Laws 2016, LB666, § 9.

#### (k) POINT SYSTEM

##### **60-4,182 Point system; offenses enumerated.**

In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

- (1) Conviction of motor vehicle homicide - 12 points;
- (2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the conviction record of the court's order - 12 points;
- (3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;
- (4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;
- (5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;
- (6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;
- (7) Careless driving in violation of any city or village ordinance or of section 60-6,212 - 4 points;
- (8) Negligent driving in violation of any city or village ordinance - 3 points;
- (9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 - 5 points;
- (10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:
  - (a) More than five miles per hour but not more than ten miles per hour over the speed limit - 2 points;
  - (b) More than ten miles per hour but not more than thirty-five miles per hour over the speed limit - 3 points, except that one point shall be assessed upon

conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour but not more than thirty-five miles per hour the speed limits provided for in subdivision (1)(f), (g), (h), or (i) of section 60-6,186; and

(c) More than thirty-five miles per hour over the speed limit - 4 points;

(11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian - 2 points;

(12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian - 4 points;

(13) Using a handheld wireless communication device in violation of section 60-6,179.01 or texting while driving in violation of subsection (1) or (3) of section 60-6,179.02 - 3 points;

(14) Using a handheld mobile telephone in violation of subsection (2) or (4) of section 60-6,179.02 - 3 points;

(15) Unlawful obstruction or interference of the view of an operator in violation of section 60-6,256 - 1 point;

(16) A violation of subsection (1) of section 60-6,175 - 3 points; and

(17) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01 and 60-497.02 - 1 point.

Subdivision (17) of this section does not include violations involving an occupant protection system or a three-point safety belt system pursuant to section 60-6,270; parking violations; violations for operating a motor vehicle without a valid operator's license in the operator's possession; muffler violations; overwidth, overheight, or overlength violations; autocycle, motorcycle, or moped protective helmet violations; or overloading of trucks.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle as defined in section 60-611 or an electric personal assistive mobility device as defined in section 60-618.02.

**Source:** Laws 1953, c. 219, § 1, p. 768; Laws 1955, c. 156, § 1, p. 457; Laws 1957, c. 168, § 1, p. 587; Laws 1957, c. 366, § 26, p. 1261; Laws 1959, c. 169, § 2, p. 617; Laws 1959, c. 174, § 1, p. 625; Laws 1961, c. 185, § 3, p. 571; Laws 1967, c. 235, § 2, p. 630; R.R.S.1943, § 39-7,128; Laws 1974, LB 590, § 1; Laws 1974, LB 873, § 4; Laws 1975, LB 328, § 1; Laws 1975, LB 381, § 4; Laws 1976, LB 265, § 1; Laws 1983, LB 204, § 1; Laws 1985, LB 496, § 2; Laws 1987, LB 224, § 3; Laws 1987, LB 430, § 3; Laws 1988, LB 428, § 6; Laws 1992, LB 958, § 2; R.S.Supp.,1992, § 39-669.26; Laws 1993, LB 370, § 80; Laws 1993, LB 575, § 17; Laws 1996, LB 901, § 2; Laws 2001, LB 166, § 3; Laws 2001, LB 773, § 14; Laws 2002, LB 1105, § 446; Laws 2006, LB 925, § 3;

Laws 2007, LB35, § 1; Laws 2008, LB621, § 1; Laws 2010, LB945, § 1; Laws 2011, LB500, § 1; Laws 2012, LB751, § 40; Laws 2012, LB1039, § 1; Laws 2014, LB983, § 54; Laws 2015, LB95, § 8; Laws 2015, LB231, § 26; Laws 2018, LB909, § 91; Laws 2018, LB1009, § 2; Laws 2019, LB270, § 38; Laws 2020, LB944, § 65.

**Cross References**

**Assessment of points when person is placed on probation**, see section 60-497.01.

Pursuant to subsection (13) of this section, points are assessed against a driver's record as of the date of the violation rather than the date the Director of Motor Vehicles becomes aware of the violation. *Delgado v. Abramson*, 254 Neb. 606, 578 N.W.2d 833 (1998).

**60-4,183 Point system; revocation of license, when; driver's education and training course; employment driving permit or medical hardship driving permit, exception.**

Whenever it comes to the attention of the director that any person has, as disclosed by the records of the director, accumulated a total of twelve or more points within any period of two years, as set out in section 60-4,182, the director shall (1) summarily revoke the operator's license of such person and (2) require such person to attend and successfully complete a driver's education and training course consisting of at least four hours of instruction approved by the Department of Motor Vehicles.

Such instruction shall be successfully completed before the operator's license may be reinstated. Each person who attends such instruction shall pay the cost of such course.

Such revocation shall be for a period of six months from the date of the signing of the order of revocation or six months from the date of the release of such person from the jail or a Department of Correctional Services adult correctional facility, whichever is the later, unless a longer period of revocation was directed by the terms of the abstract of the judgment of conviction transmitted to the director by the trial court.

Any motor vehicle except a commercial motor vehicle may be operated under an employment driving permit as provided by section 60-4,129 or a medical hardship driving permit as provided by section 60-4,130.01.

**Source:** Laws 1953, c. 219, § 2, p. 770; Laws 1957, c. 169, § 1, p. 590; Laws 1957, c. 366, § 27, p. 1262; Laws 1957, c. 275, § 1, p. 1002; Laws 1957, c. 165, § 4, p. 584; Laws 1959, c. 174, § 2, p. 627; Laws 1961, c. 315, § 1, p. 997; Laws 1961, c. 316, § 1, p. 1007; Laws 1963, c. 232, § 1, p. 721; Laws 1965, c. 219, § 1, p. 637; Laws 1967, c. 234, § 1, p. 620; Laws 1973, LB 414, § 1; R.S.Supp.,1973, § 39-7,129; Laws 1975, LB 259, § 2; Laws 1975, LB 263, § 1; Laws 1989, LB 285, § 3; Laws 1991, LB 420, § 5; R.S.Supp.,1992, § 39-669.27; Laws 1993, LB 31, § 17; Laws 1993, LB 105, § 2; Laws 1993, LB 370, § 81; Laws 2021, LB113, § 31.

Operative date August 28, 2021.

1. Constitutional
2. Revocation
3. Miscellaneous

**1. Constitutional**

This section has been held constitutional and convictions unappealed from and not void cannot be challenged in proceedings hereunder. *Bohlen v. Kissack*, 189 Neb. 262, 202 N.W.2d 171 (1972).

**2. Revocation**

When his records disclose any person has accumulated twelve or more points within two years, Director of Motor Vehicles must revoke his license and privileges to operate a motor vehicle in this state. *Westenburg v. Weedlun*, 187 Neb. 679, 193 N.W.2d 566 (1972).

The accumulation of twelve or more points within a two-year period makes mandatory the suspension of the operator's license. *Lutjemeyer v. Dennis*, 186 Neb. 46, 180 N.W.2d 679 (1970).

Accumulation of twelve or more points within two-year period requires suspension of license. *Martindale v. State*, 181 Neb. 64, 147 N.W.2d 6 (1966).

Revocation of driver's license is for a period of one year. *State v. Garst*, 175 Neb. 731, 123 N.W.2d 638 (1963).

Where required number of points are accumulated, suspension of license is required. *Strasser v. Ress*, 165 Neb. 858, 87 N.W.2d 619 (1958).

Period of revocation of license runs from the date of latest conviction. *Stewart v. Ress*, 165 Neb. 211, 85 N.W.2d 260 (1957).

Plea of guilty to charge of speeding was equivalent of a conviction. *Stewart v. Ress*, 164 Neb. 876, 83 N.W.2d 901 (1957).

Where total of twelve or more points are accumulated in any two-year period, revocation of license is mandatory. *Durfee v. Ress*, 163 Neb. 768, 81 N.W.2d 148 (1957).

**3. Miscellaneous**

Revocation of an individual's license to operate a motor vehicle as the result of accumulation of 12 or more points within a period of 2 years is not an act of a state official done pursuant to, or in enforcing, the provisions of the Driver License

*Compact. Gillespie v. State*, 230 Neb. 587, 432 N.W.2d 801 (1988).

An accumulation of points comes to the attention of the Director of Motor Vehicles at the time of receipt of the final abstract of conviction by the Department of Motor Vehicles. The action required of the director is ministerial and directory in nature. Thus, the requirement of a summary revocation relates only to the prompt accomplishment of the statute's purpose and does not require a strict and literal compliance as to every detail thereof. *Berlowitz v. Dept. of Motor Vehicles*, 210 Neb. 843, 317 N.W.2d 93 (1982).

Whenever a guilty plea is treated as a judgment of conviction to support an order revoking a motor vehicle operator's license, and it is challenged in district court, it must appear from the record that there was a judicial acceptance of that plea. *Miller v. Peterson*, 208 Neb. 658, 305 N.W.2d 364 (1981).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. *Mackey v. Director of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

The Director of Motor Vehicles is required to interpret abstracts of conviction in accordance with laws regulating use of motor vehicles. *Jarmin v. Kissack*, 190 Neb. 365, 208 N.W.2d 675 (1973).

The amount by which the speed limit was exceeded is a part of the information to be shown on the abstract for conviction report. *Melanson v. State*, 188 Neb. 446, 197 N.W.2d 401 (1972).

The director acts ministerially in revoking a driver's license under this and related section. *State v. Lessert*, 188 Neb. 243, 196 N.W.2d 166 (1972).

Due process does not require notice and hearing before revocation for point violations hereunder. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

In assessing points hereunder, Director of Motor Vehicles must consider provisions of statute which was violated. *Westenburg v. Weedlun*, 187 Neb. 679, 193 N.W.2d 566 (1972).

Validity of prior judgments of conviction cannot be collaterally attacked on appeal from order of revocation of license. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

**60-4,184 Revocation of license; notice; failure to return license; procedure; penalty; appeal; effect.**

Within ten days after the revocation provided for by section 60-4,183, the director shall notify in writing the person whose operator's license has been revoked that such license has been revoked. Such notice shall:

- (1) Contain a list of the convictions for violations upon which the director relies as his or her authority for the revocation, with the dates of such violations upon which convictions were had and the dates of such convictions, the trial courts in which such judgments of conviction were rendered, and the points charged for each conviction;
- (2) State the term of such revocation;
- (3) Include a demand that the license be returned to the director immediately; and
- (4) Be served by mailing it to such person by regular United States mail to the last-known residence of such person or, if such address is unknown, to the last-known business address of such person.

If any person fails to return his or her license to the director as demanded, the director shall immediately direct any peace officer or authorized representative of the director to secure possession of such license and return the license to the director. A refusal to surrender an operator's license on demand shall be

unlawful, and any person failing to surrender his or her license as required by this section shall be guilty of a Class III misdemeanor.

Any person who feels aggrieved because of such revocation may appeal from such revocation in the manner set forth in section 60-4,105. Such appeal shall not suspend the order of revocation of such license unless a stay of such order is allowed by a judge of such court pending a final determination of the review. The license of any person claiming to be aggrieved shall not be restored to such person, in the event the final judgment of a court finds against such person, until the full time of revocation, as fixed by the Department of Motor Vehicles, has elapsed.

**Source:** Laws 1953, c. 219, § 3, p. 770; Laws 1955, c. 157, § 1, p. 460; Laws 1957, c. 242, § 32, p. 845; Laws 1957, c. 366, § 28, p. 1263; Laws 1959, c. 174, § 3, p. 627; R.R.S.1943, § 39-7,130; Laws 1975, LB 263, § 2; Laws 1989, LB 285, § 4; R.S.Supp.,1992, § 39-669.28; Laws 1993, LB 370, § 82; Laws 1999, LB 704, § 42; Laws 2012, LB751, § 41.

#### **60-4,185 License; revocation; when points disregarded.**

When the operator's license of a person is revoked for a period of at least six months pursuant to an order of conviction or as provided by sections 60-4,182 to 60-4,186, points accumulated by reason of the conviction containing such order of revocation, or the conviction bringing the total number of points charged to such person to twelve or more, and all prior points accumulated, shall be disregarded so far as any subsequent revocation is concerned.

**Source:** Laws 1953, c. 219, § 5, p. 771; R.R.S.1943, § 39-7,132; Laws 1975, LB 263, § 3; R.S.1943, (1988), § 39-669.29; Laws 1993, LB 370, § 83; Laws 2001, LB 38, § 39.

In construing sections 39-669.26 to 39-669.30 (transferred to sections 60-4,182 to 60-4,186) together, the points which are to be disregarded for purposes of subsequent revocation under this section are those points for which a conviction had been had prior to the first revocation. Conkel v. Higgins, 1 Neb. App. 676, 511 N.W.2d 147 (1993).

#### **60-4,186 Operation after revocation; violation; penalty; employment driving permit or medical hardship driving permit excepted; proof of financial responsibility.**

It shall be unlawful to operate a motor vehicle on the public highways after revocation of an operator's license under sections 60-4,182 to 60-4,186, except that a motor vehicle other than a commercial motor vehicle may be operated under an employment driving permit as provided by section 60-4,129 or a medical hardship driving permit as provided in section 60-4,130.01. Any person who violates the provisions of this section shall be guilty of a Class III misdemeanor.

Any operator's license revoked under sections 60-4,182 to 60-4,186 shall remain revoked for six months, and at the expiration of the six-month period, such person shall give and maintain for three years proof of financial responsibility as required by section 60-524. Any person whose operator's license has been revoked pursuant to sections 60-4,182 to 60-4,186 a second time within five years shall have his or her operator's license revoked for three years, and at the expiration of the three-year period, such person shall give and maintain for three years proof of financial responsibility as required by section 60-524.

**Source:** Laws 1953, c. 219, § 6, p. 771; Laws 1955, c. 158, § 1, p. 461; Laws 1959, c. 174, § 4, p. 628; Laws 1973, LB 213, § 1;

R.S.Supp.,1973, § 39-7,133; Laws 1975, LB 259, § 3; Laws 1977, LB 41, § 14; Laws 1989, LB 285, § 5; R.S.Supp.,1992, § 39-669.30; Laws 1993, LB 105, § 3; Laws 1993, LB 370, § 84.

The gravamen of or the misconduct prohibited by section 60-418 (transferred to section 60-4,107) and this section is operation of a motor vehicle after judicial or administrative deprivation of the operator's privilege or license to operate a motor vehicle on the public highways of the State of Nebraska. Although the terms suspension and revocation were used interchangeably in this case, such misuse did not arise to the stature of sufficient prejudice to warrant reversal of judgment. *State v. Jost*, 219 Neb. 162, 361 N.W.2d 526 (1985).

At expiration of period of revocation or suspension of license, operator of motor vehicle must give and maintain proof of

financial responsibility. *State v. Smith*, 181 Neb. 846, 152 N.W.2d 16 (1967).

This section sets forth the penalty under the point system act. *State v. Ruggiere*, 180 Neb. 869, 146 N.W.2d 373 (1966).

Revocation of license for points accumulated before amendment of statute was not ex post facto application of statute. *Durfee v. Ress*, 163 Neb. 768, 81 N.W.2d 148 (1957).

#### **60-4,187 Pardon by mayor or chairperson of board of trustees; effect.**

Upon receipt of notice of a pardon granted by any mayor of any city or any chairperson of the board of trustees of any village, the director shall not restore points assessed against an individual as provided by section 60-4,182 or reinstate any permit to operate a motor vehicle revoked pursuant to section 60-4,183.

**Source:** Laws 1975, LB 200, § 1; R.S.1943, (1988), § 39-669.33; Laws 1993, LB 370, § 85.

#### **60-4,188 Driver's education and training course; reduce point assessment.**

Any person who has fewer than twelve points assessed against his or her driving record under section 60-4,182 may voluntarily enroll in a driver's education and training course approved by the Department of Motor Vehicles. Upon notification of successful completion of such a course by the conducting organization, the department shall reduce by two the number of points assessed against such person's driving record within the previous two years. This section shall only apply to persons who have successfully completed such driver's education and training course prior to committing any traffic offense for which a conviction and point assessment against their driving record would otherwise result in a total of twelve or more points assessed against their record. No person required to enroll in a driver's education and training course pursuant to section 60-4,130, 60-4,130.03, or 60-4,183 shall be eligible for a reduction in points assessed against his or her driving record upon the successful completion of such course. If a person has only one point assessed against his or her record within the previous two years, upon notification of successful completion of such a course by the conducting organization, the department shall reduce one point from such person's driving record. Such reduction shall be allowed only once within a five-year period. Notification of completion of an approved driver's education and training course shall be sent to the department, upon successful completion thereof, by the conducting organization. Such course shall consist of at least four hours of instruction and shall follow such other guidelines as are established by the department.

**Source:** Laws 1983, LB 204, § 2; Laws 1989, LB 285, § 6; R.S.Supp.,1992, § 39-669.37; Laws 1993, LB 370, § 86; Laws 1998, LB 320, § 20; Laws 2021, LB113, § 32.  
Operative date August 28, 2021.



## (I) VETERAN NOTATION

**60-4,189 Operator's license; state identification card; veteran designation; Department of Motor Vehicles; duties; replacement license or card.**

(1) An operator's license or a state identification card shall include a veteran designation on the front of the license or card as directed by the department if the individual applying for such license or card is eligible for the license or card and:

(a)(i) Has served in the United States Army, United States Army Reserve, United States Navy, United States Navy Reserve, United States Marine Corps, United States Marine Corps Reserve, United States Coast Guard, United States Coast Guard Reserve, United States Air Force, United States Air Force Reserve, or National Guard and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from such service; or

(ii) Has served as a commissioned officer in the United States Public Health Service or the National Oceanic and Atmospheric Administration, was detailed to any branch of the armed forces of the United States for service on active or reserve duty, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) as proven with valid orders from the United States Department of Defense, a statement of service provided by the United States Public Health Service, or a report of transfer or discharge provided by the National Oceanic and Atmospheric Administration;

(b) Registers with the Department of Veterans' Affairs pursuant to section 80-414 as verification of such service; and

(c) Indicates on the application under section 60-484 his or her wish to include such veteran designation on his or her license or card.

(2) The Department of Motor Vehicles shall consult the registry established pursuant to section 80-414 before placing the veteran designation on the operator's license or state identification card issued to the applicant. Such designation shall not be authorized unless the registry verifies the applicant's eligibility. If eligible, the designation to be placed on the applicant's license or card shall be as follows:

(a) The words "Guard-Veteran" for any veteran of the National Guard;

(b) The words "Reserve-Veteran" for any veteran who served on reserve duty; or

(c) The word "Veteran" for all other veterans.

(3) If the Director of Motor Vehicles discovers evidence of fraud in an application under this section, the director may summarily cancel the license or state identification card and send notice of the cancellation to the licensee or cardholder. If the Department of Motor Vehicles has information that an individual is no longer eligible for the veteran designation, the department may summarily cancel the license and send notice of the cancellation to the licensee or cardholder. The veteran designation shall not be restored until the Department of Motor Vehicles subsequently verifies the applicant's eligibility by consulting the registry of the Department of Veterans' Affairs.

(4) The veteran designation authorized in this section shall continue to be included on the license or card upon renewal of such license or card if the

licensee or cardholder, at the time of renewal, indicates the desire to include the veteran designation.

(5) An individual may obtain a replacement operator’s license or state identification card to add or remove the veteran designation authorized in this section by applying to the Department of Motor Vehicles for such replacement license or card and, if adding the veteran designation, by meeting the requirements of subsection (1) of this section. The fee for such replacement license or card shall be the fee provided in section 60-4,115.

**Source:** Laws 2013, LB93, § 4; Laws 2019, LB192, § 4.

**ARTICLE 5**

**MOTOR VEHICLE SAFETY RESPONSIBILITY**

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Section  
60-501. Terms, defined.

(b) ADMINISTRATION

60-502. Sections; administration.  
60-503. Appeal; procedure.  
60-504. Operating record; furnished by department; contents; not admissible in evidence.  
60-505. Repealed. Laws 1993, LB 575, § 55.  
60-505.01. Repealed. Laws 1961, c. 319, § 8.  
60-505.02. Reinstatement of license or registration; filing of proof of financial responsibility; payment of fees.  
60-505.03. Repealed. Laws 1993, LB 575, § 55.  
60-505.04. Repealed. Laws 1993, LB 575, § 55.  
60-506. Repealed. Laws 1993, LB 575, § 55.  
60-506.01. Report of accident; effect.

(c) SECURITY FOLLOWING ACCIDENT

60-507. Accident; damage of one thousand five hundred dollars or more; suspend license; suspend privilege of operation by nonresident; notice; exception; proof of financial responsibility; failure to furnish information; effect.  
60-508. Ability to respond in damages; automobile liability policy; no suspension; exemptions.  
60-509. Automobile liability policy; corporate surety bond; effective when; limits; notice of accident; duty of insurance company or surety company.  
60-509.01. Repealed. Laws 1994, LB 1074, § 19.  
60-509.02. Repealed. Laws 1994, LB 1074, § 19.  
60-509.03. Repealed. Laws 1994, LB 1074, § 19.  
60-509.04. Repealed. Laws 1989, LB 25, § 3.  
60-510. Requirements for security; exceptions.  
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60-512. Compliance with law; person with no license or registration; nonresident; resident with accident occurring in other state.  
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(d) PROOF OF FINANCIAL RESPONSIBILITY

60-516. Failure to satisfy judgment; nonresidents.  
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60-518. License and registration; suspension for nonpayment of judgment; exception.  
60-519. License and registration; suspension for nonpayment of judgment; judgment satisfied; proof of financial responsibility.  
60-520. Judgments; payments sufficient to satisfy requirements.

## MOTOR VEHICLE SAFETY RESPONSIBILITY

- Section  
60-521. Judgments; installment payments.  
60-522. Judgments; installment payments; financial responsibility; license or registration; restore.  
60-523. Judgments; installment payments; default; suspend license or registration.  
60-524. Convictions; suspension of license or registration of operator or owner; when; reinstatement; proof of financial responsibility.  
60-524.01. Repealed. Laws 1961, c. 319, § 8.  
60-524.02. Repealed. Laws 1961, c. 319, § 8.  
60-525. Convictions; suspension of license and registration; renewal; financial responsibility.  
60-526. License and registration; conviction without a license; subsequent issuance of license or registration; proof of financial responsibility.  
60-526.01. Repealed. Laws 1963, c. 364, § 1.  
60-527. Nonresident's operating privilege; suspension or revocation; conviction or forfeiture of bail; proof of financial responsibility for removal.  
60-528. Proof of financial responsibility; proof; enumerated; copy provided.  
60-529. Proof of financial responsibility; certificate of insurance; contents.  
60-530. Proof of financial responsibility; certificate of insurance; designation of motor vehicle.  
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### (e) VIOLATIONS

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**§ 60-501**

**MOTOR VEHICLES**

Section

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(g) UNDERINSURED MOTORIST INSURANCE COVERAGE

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- 60-574. Transferred to section 44-6406.
- 60-575. Transferred to section 44-6407.
- 60-576. Transferred to section 44-6403.
- 60-577. Transferred to section 44-6408.
- 60-578. Transferred to section 44-6409.
- 60-579. Transferred to section 44-6410.
- 60-580. Transferred to section 44-6411.
- 60-581. Transferred to section 44-6412.
- 60-582. Transferred to section 44-6413.

(a) DEFINITIONS

**60-501 Terms, defined.**

For purposes of the Motor Vehicle Safety Responsibility Act, unless the context otherwise requires:

- (1) Department means Department of Motor Vehicles;
- (2) Former military vehicle means a motor vehicle that was manufactured for use in any country's military forces and is maintained to accurately represent its military design and markings, regardless of the vehicle's size or weight, but is no longer used, or never was used, by a military force;
- (3) Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes;
- (4) Judgment means any judgment which shall have become final by the expiration of the time within which an appeal might have been perfected without being appealed, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, (a) upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or (b) upon a cause of action on an agreement of settlement for such damages;
- (5) License means any license issued to any person under the laws of this state pertaining to operation of a motor vehicle within this state;

(6) Low-speed vehicle means a (a) four-wheeled motor vehicle (i) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (ii) whose gross vehicle weight rating is less than three thousand pounds, and (iii) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2021, or (b) three-wheeled motor vehicle (i) whose maximum speed attainable is not more than twenty-five miles per hour on a paved, level surface, (ii) whose gross vehicle weight rating is less than three thousand pounds, and (iii) which is equipped with a windshield and an occupant protection system. A motorcycle with a sidecar attached is not a low-speed vehicle;

(7) Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (a) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (b) is sixty-seven inches or less in width, (c) has a dry weight of four thousand two hundred pounds or less, (d) travels on four or more tires, (e) has a top speed of approximately fifty-five miles per hour, (f) is equipped with a bed or compartment for hauling, (g) has an enclosed passenger cab, (h) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (i) has a four-speed, five-speed, or automatic transmission;

(8) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, mini-trucks, and low-speed vehicles. Motor vehicle includes a former military vehicle. Motor vehicle does not include (a) mopeds as defined in section 60-637, (b) traction engines, (c) road rollers, (d) farm tractors, (e) tractor cranes, (f) power shovels, (g) well drillers, (h) every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, (i) electric personal assistive mobility devices as defined in section 60-618.02, (j) off-road designed vehicles, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663, and (k) bicycles as defined in section 60-611;

(9) Nonresident means every person who is not a resident of this state;

(10) Nonresident's operating privilege means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him or her of a motor vehicle or the use of a motor vehicle owned by him or her in this state;

(11) Operator means every person who is in actual physical control of a motor vehicle;

(12) Owner means a person who holds the legal title of a motor vehicle, or in the event (a) a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or (b) a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of the act;

(13) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(14) Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the

effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (a) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (b) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (c) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;

(15) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(16) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(17) The forfeiture of bail, not vacated, or of collateral deposited to secure an appearance for trial shall be regarded as equivalent to conviction of the offense charged.

**Source:** Laws 1949, c. 178, § 1, p. 482; Laws 1957, c. 366, § 42, p. 1275; Laws 1959, c. 298, § 1, p. 1107; Laws 1959, c. 299, § 1, p. 1123; Laws 1971, LB 644, § 4; Laws 1972, LB 1196, § 4; Laws 1973, LB 365, § 1; Laws 1979, LB 23, § 14; Laws 1983, LB 253, § 1; Laws 1987, LB 80, § 11; Laws 1993, LB 121, § 385; Laws 1993, LB 370, § 94; Laws 2002, LB 1105, § 447; Laws 2010, LB650, § 32; Laws 2011, LB289, § 26; Laws 2012, LB898, § 3; Laws 2012, LB1155, § 15; Laws 2015, LB95, § 9; Laws 2016, LB929, § 9; Laws 2017, LB263, § 70; Laws 2018, LB909, § 92; Laws 2019, LB79, § 17; Laws 2019, LB156, § 13; Laws 2019, LB270, § 39; Laws 2020, LB944, § 66; Laws 2021, LB149, § 16.  
Effective date August 28, 2021.

The definition of "financial responsibility," used in subsection (10) of this section, applies to only policies used as proof of financial responsibility specifically required for compliance with the Motor Vehicle Safety Responsibility Act. *Allied Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 243 Neb. 779, 502 N.W.2d 484 (1993).

In a proceeding in the district court to review an order of the Department of Motor Vehicles under this act, the burden is on the plaintiff to show that the order was invalid. *Way v. Department of Motor Vehicles*, 217 Neb. 641, 351 N.W.2d 46 (1984).

The security deposit required by this act will be construed in light of its purpose, which is to insure that any judgment against an uninsured motorist will be paid. *Way v. Department of Motor Vehicles*, 217 Neb. 641, 351 N.W.2d 46 (1984).

Department may suspend license for failure to comply with act. *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620 (1952).

Operator of grain truck and trailer was guilty of manslaughter. *Vaca v. State*, 150 Neb. 516, 34 N.W.2d 873 (1948).

## (b) ADMINISTRATION

### 60-502 Sections; administration.

The department shall administer and enforce the provisions of sections 60-501 to 60-569 and may make rules and regulations necessary for its administration.

**Source:** Laws 1949, c. 178, § 2, p. 484.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

### 60-503 Appeal; procedure.

(1) Any person aggrieved by an order or act of the department under the Motor Vehicle Safety Responsibility Act may, within thirty days after notice thereof, file a petition in the district court of the county where the aggrieved

person resides, but in the event the aggrieved person is a nonresident, then such petition shall be filed in the district court of Lancaster County for a review thereof. The filing of such petition shall suspend the order or act pending a final determination of the review. The license or registration of any person claiming to be aggrieved shall not be restored to such person in the event the final judgment of a court finds against such person until the full time of revocation as fixed by the department shall have elapsed. The court shall summarily hear the petition as a case in equity without a jury and may make any appropriate order or decree.

(2) The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

**Source:** Laws 1949, c. 178, § 3, p. 484; Laws 1972, LB 1303, § 1; Laws 1988, LB 352, § 106; Laws 1989, LB 352, § 2.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

On appeal, the burden of proof is on the licensee to establish the invalidity of an order revoking the licensee's motor vehicle operator's license. On appeal, the district court is required to consider the entire record made before the Director of Motor Vehicles and the record is, therefore, admissible in the district court. *Wroblewski v. Pearson*, 210 Neb. 82, 313 N.W.2d 231 (1981).

In a hearing under this section, the court may consider as evidence the documents considered by the agency under the terms of section 60-507(3). In a hearing under this section, one whose license was revoked by the director has the burden of showing that the revocation was unreasonable. *Hehn v. State*, 206 Neb. 34, 290 N.W.2d 813 (1980).

Summary review, in district court, of a department order involves only question of potential judgment, and is not a determination of ultimate liability. *Berg v. Pearson*, 199 Neb. 390, 259 N.W.2d 275 (1977).

On facts in this case, dismissal of petition contesting order of suspension of driver's license was proper. *Schetzler v. Sullivan*, 193 Neb. 841, 229 N.W.2d 550 (1975).

Statutory remedy of appeal is provided to person aggrieved by order of department. *Montgomery v. Blazek*, 161 Neb. 349, 73 N.W.2d 402 (1955).

Action involved was not an appeal under this section. *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620 (1952).

#### **60-504 Operating record; furnished by department; contents; not admissible in evidence.**

The department shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of sections 60-501 to 60-569, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the department shall so certify. Such abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

**Source:** Laws 1949, c. 178, § 4, p. 485.

#### **60-505 Repealed. Laws 1993, LB 575, § 55.**

#### **60-505.01 Repealed. Laws 1961, c. 319, § 8.**

#### **60-505.02 Reinstatement of license or registration; filing of proof of financial responsibility; payment of fees.**

(1) Whenever a license is revoked and the filing of proof of financial responsibility is, by the Motor Vehicle Safety Responsibility Act, made a prerequisite to reinstatement of eligibility for a new license, no license shall be issued unless the licensee, in addition to complying with the other provisions of the act, pays to the Department of Motor Vehicles a reinstatement fee of one hundred twenty-five dollars. The fees paid pursuant to this subsection shall be

remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

(2) Whenever a license is suspended and the filing of proof of financial responsibility is, by the act, made a prerequisite to reinstatement of such license or to the issuance of a new license, no such license shall be reinstated or new license issued unless the licensee, in addition to complying with the other provisions of the act, pays to the department a fee of fifty dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(3) When a registration is suspended and the filing of proof of financial responsibility is, by the act, made a prerequisite to reinstatement of the registration, no such registration shall be reinstated or new registration issued unless the registrant, in addition to complying with the act and the Motor Vehicle Registration Act, pays to the department a fee of fifty dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1959, c. 298, § 4, p. 1110; Laws 1980, LB 672, § 1; Laws 1993, LB 491, § 16; Laws 2001, LB 38, § 40; Laws 2005, LB 274, § 236.

#### Cross References

**Motor Vehicle Registration Act**, see section 60-301.

**60-505.03 Repealed. Laws 1993, LB 575, § 55.**

**60-505.04 Repealed. Laws 1993, LB 575, § 55.**

**60-506 Repealed. Laws 1993, LB 575, § 55.**

**60-506.01 Report of accident; effect.**

If the Department of Motor Vehicles receives Part II of a report of an accident from the Department of Transportation pursuant to section 60-699, it shall be presumed for purposes of the Motor Vehicle Safety Responsibility Act that the Part II information is true, and such presumption shall be accepted, when applicable, as satisfying the requirements of sections 60-507, 60-508, and 60-509.

**Source:** Laws 1961, c. 319, § 6, p. 1021; Laws 1993, LB 575, § 44; Laws 2017, LB263, § 71.

In absence of showing that Department of Motor Vehicles mailed Part II of accident report to insurance company named therein, there was no basis for presumption of coverage. *Belek v. Travelers Ind. Co.*, 187 Neb. 470, 191 N.W.2d 819 (1971).

#### (c) SECURITY FOLLOWING ACCIDENT

**60-507 Accident; damage of one thousand five hundred dollars or more; suspend license; suspend privilege of operation by nonresident; notice; exception; proof of financial responsibility; failure to furnish information; effect.**

(1)(a) Within ninety days after the receipt by the Department of Transportation of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person, including such operator, to an apparent extent of one thousand five hundred dollars or more, the Department of Motor Vehicles shall suspend (i) the license



of each operator of a motor vehicle in any manner involved in such accident and (ii) the privilege, if such operator is a nonresident, of operating a motor vehicle within this state, unless such operator deposits security in a sum which shall be sufficient, in the judgment of the Department of Motor Vehicles, to satisfy any judgment or judgments for damages resulting from such accident which may be recovered against such operator and unless such operator gives proof of financial responsibility. Notice of such suspension shall be sent by the Department of Motor Vehicles by regular United States mail to such operator not less than twenty days prior to the effective date of such suspension at his or her last-known mailing address as shown by the records of the department and shall state the amount required as security and the requirement of proof of financial responsibility.

(b) In the event a person involved in a motor vehicle accident within this state fails to make a report to the Department of Motor Vehicles indicating the extent of his or her injuries or the damage to his or her property within thirty days after the accident, and the department does not have sufficient information on which to base an evaluation of such injury or damage, the department, after reasonable notice to such person, may not require any deposit of security for the benefit or protection of such person.

(c) If the operator fails to respond to the notice on or before twenty days after the date of the notice, the director shall summarily suspend the operator's license or privilege and issue an order of suspension.

(2) The order of suspension provided for in subsection (1) of this section shall not be entered by the Department of Motor Vehicles if the department determines that in its judgment there is no reasonable possibility of a judgment being rendered against such operator.

(3) In determining whether there is a reasonable possibility of judgment being rendered against such operator, the department shall consider all reports and information filed in connection with the accident.

(4) The order of suspension provided for in subsection (1) of this section shall advise the operator that he or she has a right to appeal the order of suspension in accordance with section 60-503.

(5) The order of suspension provided for in subsection (1) of this section shall be sent by regular United States mail to the operator's last-known mailing address as shown by the records of the department.

**Source:** Laws 1949, c. 178, § 7, p. 486; Laws 1953, c. 215, § 3, p. 763; Laws 1957, c. 366, § 45, p. 1278; Laws 1959, c. 298, § 5, p. 1111; Laws 1961, c. 319, § 7, p. 1022; Laws 1967, c. 392, § 1, p. 1218; Laws 1972, LB 1303, § 2; Laws 1973, LB 417, § 4; Laws 1985, LB 94, § 6; Laws 1997, LB 10, § 2; Laws 2003, LB 185, § 1; Laws 2012, LB751, § 42; Laws 2017, LB339, § 181; Laws 2021, LB174, § 22.

Effective date August 28, 2021.

This section clearly details the proof of financial responsibility requirements that a vehicle operator or owner must meet in the event of an accident. *Russell v. State*, 247 Neb. 885, 531 N.W.2d 212 (1995).

The plain language of subsection (1) of this section requires only that notice be sent by the Department of Motor Vehicles by certified mail to such motor vehicle operator. It does not require that a return receipt be requested. *Wollenburg v. Conrad*, 246 Neb. 666, 522 N.W.2d 408 (1994).

Defendant cannot rely on notice provisions of this section as a defense if he has made an intelligent and voluntary guilty plea. *State v. Jones*, 214 Neb. 145, 332 N.W.2d 702 (1983).

An order entered by the Director of Motor Vehicles suspending a motor vehicle operator's license should not be set aside unless there is no reasonable possibility of a judgment being rendered against the operator in question. *Wroblewski v. Pearson*, 210 Neb. 82, 313 N.W.2d 231 (1981).

On facts in this case, dismissal of petition contesting order of suspension of driver's license was proper. *Schetzler v. Sullivan*, 193 Neb. 841, 229 N.W.2d 550 (1975).

Department is required to suspend license when statutory conditions exist. *Montgomery v. Blazek*, 161 Neb. 349, 73 N.W.2d 402 (1955).

Department may suspend license for failure to deposit security. *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620 (1952).

**60-508 Ability to respond in damages; automobile liability policy; no suspension; exemptions.**

Sections 60-507 and 60-511 shall not apply:

- (1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;
- (2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;
- (3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance policy or bond;
- (4) To any person qualifying as a self-insurer under sections 60-562 to 60-564 or to any operator of a motor vehicle owned by such self-insurer;
- (5) To any person employed by the government of the United States when such person is acting within the scope or office of his employment; or
- (6) If such operator is released from liability by a court of justice.

**Source:** Laws 1949, c. 178, § 8, p. 486; Laws 1959, c. 298, § 6, p. 1111; Laws 1965, c. 388, § 1, p. 1244.

This section clearly details the proof of financial responsibility requirements that a vehicle operator or owner must meet in the event of an accident. *Russell v. State*, 247 Neb. 885, 531 N.W.2d 212 (1995).

Uninsured motorist coverage is dependent upon legal liability of the uninsured motorist to the insured. *Crossley v. Pacific Employers Ins. Co.*, 198 Neb. 26, 251 N.W.2d 383 (1977).

The uninsured motorist statute does not prohibit a limitation of liability to the minimum limits required by statute in each policy even though the policy may insure more than one automobile. *Pettid v. Edwards*, 195 Neb. 713, 240 N.W.2d 344 (1976).

A motor vehicle covered by insurance in limits specified in this section does not become an uninsured vehicle, when be-

cause of multiple claims the insurance is not sufficient to satisfy liability of the insured to each claimant to the limits specified herein for individual claims. *Emery v. State Farm Mut. Auto. Ins. Co.*, 195 Neb. 619, 239 N.W.2d 798 (1976).

In absence of showing Department of Motor Vehicles mailed Part II of accident report to insurance company named therein, there is no presumption provisions of this section were met. *Belek v. Travelers Ind. Co.*, 187 Neb. 470, 191 N.W.2d 819 (1971).

Exceptions are made when owner or operator can show proof of financial responsibility. *Montgomery v. Blazek*, 161 Neb. 349, 73 N.W.2d 402 (1955).

Exceptions are made where suspension of license is not required. *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620 (1952).

**60-509 Automobile liability policy; corporate surety bond; effective when; limits; notice of accident; duty of insurance company or surety company.**

No such policy or bond shall be effective under section 60-508 unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state or was a motor vehicle which was registered elsewhere than in this state at the effective date of a policy or bond or the most recent renewal thereof, such policy or bond shall not be effective under section 60-508 unless the insurance company or surety company, if not authorized to do business in this state, shall execute an acknowledgment that the company shall be amenable to process issued by a court of this state in any action upon such policy or bond arising out of such accident. Every such policy or bond is subject, if the accident has resulted in bodily injury, sickness, disease, or death, to a limit, exclusive of interest and

costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident and, if the accident has resulted in injury to or destruction of property, to a limit of not less than twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon receipt of a notice of such accident, the insurance company or surety company which issued such policy or bond shall furnish, for filing with the department, a written notice that such policy or bond was in effect at the time of such accident.

**Source:** Laws 1949, c. 178, § 9, p. 487; Laws 1959, c. 298, § 7, p. 1112; Laws 1959, c. 299, § 2, p. 1125; Laws 1973, LB 365, § 2; Laws 1983, LB 447, § 78; Laws 1983, LB 253, § 2; Laws 1986, LB 573, § 13.

This section defines the minimum limitation of an insurer's liability under an uninsured motorist policy. *Brodersen v. Traders Ins. Co.*, 246 Neb. 688, 523 N.W.2d 24 (1994).

This section neither requires nor prohibits the aggregation or stacking of multiple uninsured motorist coverages. *Charley v. Farmers Mut. Ins. Co.*, 219 Neb. 765, 366 N.W.2d 417 (1985).

Uninsured motorist coverage is dependent upon legal liability of the uninsured motorist to the insured. *Crossley v. Pacific Employers Ins. Co.*, 198 Neb. 26, 251 N.W.2d 383 (1977).

The uninsured motorist statute does not prohibit a limitation of liability to the minimum limits required by statute in each policy even though the policy may insure more than one auto-

mobile. *Pettid v. Edwards*, 195 Neb. 713, 240 N.W.2d 344 (1976).

A motor vehicle covered by insurance in limits specified in this section does not become an uninsured vehicle, when because of multiple claims the insurance is not sufficient to satisfy liability of the insured to each claimant to the limits specified herein for individual claims. *Emery v. State Farm Mut. Auto Ins. Co.*, 195 Neb. 619, 239 N.W.2d 798 (1976).

In absence of showing Department of Motor Vehicles mailed Part II of accident report to insurance company named therein, there is no presumption provisions of this section were met. *Belek v. Travelers Ind. Co.*, 187 Neb. 470, 191 N.W.2d 819 (1971).

**60-509.01 Repealed. Laws 1994, LB 1074, § 19.**

**60-509.02 Repealed. Laws 1994, LB 1074, § 19.**

**60-509.03 Repealed. Laws 1994, LB 1074, § 19.**

**60-509.04 Repealed. Laws 1989, LB 25, § 3.**

**60-510 Requirements for security; exceptions.**

The requirements as to security, proof, and suspension in sections 60-507 and 60-511 shall not apply:

- (1) To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner;
- (2) To the operator or the owner of a motor vehicle legally parked at the time of the accident;
- (3) To the owner of a motor vehicle when such motor vehicle was being operated without the owner's permission or consent at the time of the accident; or
- (4) If, prior to the date that the department would otherwise suspend license and registration or nonresident's operating privilege under sections 60-507 and 60-511, there shall be filed with the department evidence satisfactory to it that the person, who would otherwise have to file security and proof, has (a) been released from liability, (b) been finally adjudicated not to be liable, (c) executed a warrant for confession of judgment, payable when and in such installments as the parties have agreed to, or (d) executed a duly acknowledged written

agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

**Source:** Laws 1949, c. 178, § 10, p. 487; Laws 1959, c. 298, § 8, p. 1113.

Written releases are required to comply with statute. *Montgomery v. Blazek*, 161 Neb. 349, 73 N.W.2d 402 (1955).

**60-511 Suspension; duration; renewal; settlement by insurance carrier; effect.**

The license and registration and nonresident's operating privilege suspended as provided in this section and section 60-507 shall remain so suspended and not be renewed nor shall any such license or registration be issued to such person until:

(1) Such person shall deposit and file or there shall be deposited and filed on his or her behalf the security and proof required under this section and section 60-507;

(2) A supersedeas bond is filed and approved to insure payment of any judgment recovered against such person in a court of competent jurisdiction arising out of the accident on account of which such license and registration was suspended and such person files proof of financial responsibility;

(3) Three years have elapsed following the date of such accident and evidence satisfactory to the department has been filed with it that during such period no action for damages arising out of such accident has been instituted and such person files proof of financial responsibility;

(4) Evidence satisfactory to the department has been filed with it of a release from liability, and proof of financial responsibility or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged written agreement, in accordance with subdivision (4) of section 60-510 and proof of financial responsibility. If there is any default in the payment of any installment under any confession of judgment, the department, upon notice of such default, shall suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in the confession of judgment has been paid and proof of financial responsibility has been filed. If there is any default in the payment of any installment under any duly acknowledged written agreement, the department, upon notice of such default, shall suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until (a) such person deposits and maintains security as required under section 60-507, in such amount as the department determines, and files proof of financial responsibility or (b) one year has elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this state and such person gives proof of financial responsibility; or

(5) In the event any insurance carrier of any motor vehicle operator makes settlement with the operator of another motor vehicle involved in the accident, such settlement shall, for the purpose of the Motor Vehicle Safety Responsibility Act, be construed as a release to the operators of all motor vehicles involved in the accident, and be sufficient to satisfy subdivision (4) of this section.

**Source:** Laws 1949, c. 178, § 11, p. 488; Laws 1959, c. 298, § 9, p. 1113; Laws 2021, LB174, § 23.  
Effective date August 28, 2021.

**60-512 Compliance with law; person with no license or registration; nonresident; resident with accident occurring in other state.**

(1) In case the operator or the owner of a motor vehicle involved in an accident within this state has no license or registration, such operator or owner shall not be allowed a license or registration until he or she has complied with the requirements of the Motor Vehicle Safety Responsibility Act to the same extent that would be necessary if, at the time of the accident, he or she had held a license and registration.

(2) When a nonresident's operating privilege is suspended pursuant to section 60-507 or 60-511, the department shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (3) of this section.

(3) Upon receipt of certification that the operating privilege of a resident of this state has been suspended or revoked in any other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, or for failure to deposit both security and proof of financial responsibility, under circumstances which would require the department to suspend a nonresident's operating privilege had the accident occurred in this state, the department shall suspend the license and registrations of such resident. Such suspension shall continue until such resident furnishes evidence of compliance with the law of the other state relating to the deposit of security and until such resident files proof of financial responsibility if required by the law of the other state.

**Source:** Laws 1949, c. 178, § 12, p. 489; Laws 1959, c. 298, § 10, p. 1115; Laws 2021, LB174, § 24.  
Effective date August 28, 2021.

**60-513 Security; form; amount; increase or reduction.**

The security required by the Motor Vehicle Safety Responsibility Act shall be in such form and in such amount as the department may require but in no case less than one thousand five hundred dollars nor in excess of the limits specified in section 60-509. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the department or State Treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons, except that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. The department may increase or reduce the amount of security ordered in any case at any time after the date of the accident if, in the judgment of the director, the amount ordered is inadequate or excessive. In case the security originally ordered has been deposited, the excess deposited over the reduced amount ordered shall be returned to the depositor or his or her personal representative immediately, notwithstanding section 60-514. If any additional security ordered is not deposited within ten days, the department shall proceed under section 60-507.

**Source:** Laws 1949, c. 178, § 13, p. 489; Laws 1959, c. 298, § 11, p. 1116; Laws 1961, c. 320, § 1, p. 1023; Laws 2003, LB 185, § 2; Laws 2021, LB174, § 25.  
Effective date August 28, 2021.

**60-514 Security; State Treasurer; custody; disposition; return.**

The security deposited in compliance with the Motor Vehicle Safety Responsibility Act shall be placed by the department in the custody of the State Treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law begun not later than two years after the date of such accident or within two years after the date of deposit of any security under subdivision (4) of section 60-511. The deposit or any balance of the deposit shall be returned to the depositor or his or her personal representative (1) when evidence satisfactory to the department has been filed with the department that there has been a release from liability, a final adjudication of nonliability, a supersedeas bond to insure payment of judgment filed and approved as set forth in subdivision (2) of section 60-511, a warrant for confession of judgment, or a duly acknowledged agreement, in accordance with subdivision (4) of section 60-510, or (2) whenever, after the expiration of two years from the date of the accident, or within two years after the date of deposit of any security under subdivision (4) of section 60-511, the department shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

**Source:** Laws 1949, c. 178, § 14, p. 490; Laws 1959, c. 298, § 12, p. 1116; Laws 2021, LB174, § 26.  
Effective date August 28, 2021.

**60-515 Evidence; action for damages; what not admitted.**

Neither the action taken by the department pursuant to the Motor Vehicle Safety Responsibility Act, the findings, if any, of the department upon which such action is based, nor the security filed as provided in the act shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

**Source:** Laws 1949, c. 178, § 15, p. 491; Laws 1993, LB 575, § 45.

## (d) PROOF OF FINANCIAL RESPONSIBILITY

**60-516 Failure to satisfy judgment; nonresidents.**

Whenever any person fails within sixty days to satisfy any judgment, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to transmit to the department, immediately after the expiration of sixty days, a copy of such judgment. If the defendant named in any copy of a judgment transmitted to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

**Source:** Laws 1949, c. 178, § 16, p. 491; Laws 1991, LB 420, § 14.

**60-517 License and registration; suspension for nonpayment of judgment.**

Upon the receipt of a copy of a judgment, the department shall forthwith suspend, except as provided in sections 60-521 to 60-523, the license and registration and the nonresident's operating privilege of any person against whom such judgment was rendered.

**Source:** Laws 1949, c. 178, § 17, p. 491; Laws 1991, LB 420, § 15.

**60-518 License and registration; suspension for nonpayment of judgment; exception.**

If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the department, in its discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in sections 60-521 to 60-523, provided the judgment debtor furnishes proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 18, p. 491.

**60-519 License and registration; suspension for nonpayment of judgment; judgment satisfied; proof of financial responsibility.**

Such license, registration and nonresident's operating privilege shall, except as provided in sections 60-521 to 60-523, remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied or discharged, and until the said person gives proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 19, p. 491; Laws 1972, LB 1303, § 3.

**60-520 Judgments; payments sufficient to satisfy requirements.**

Judgments in excess of the amounts specified in subdivision (14) of section 60-501 shall, for the purpose of the Motor Vehicle Safety Responsibility Act only, be deemed satisfied when payments in the amounts so specified have been credited thereon. Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified.

**Source:** Laws 1949, c. 178, § 20, p. 492; Laws 2010, LB650, § 33; Laws 2011, LB289, § 27; Laws 2012, LB1155, § 16; Laws 2019, LB156, § 14.

**60-521 Judgments; installment payments.**

A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

**Source:** Laws 1949, c. 178, § 21, p. 492.

**60-522 Judgments; installment payments; financial responsibility; license or registration; restore.**

The department shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an

order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

**Source:** Laws 1949, c. 178, § 22, p. 492.

**60-523 Judgments; installment payments; default; suspend license or registration.**

In the event the judgment debtor fails to pay an installment as specified by such order, the department, upon notice of such default, shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 23, p. 492.

**60-524 Convictions; suspension of license or registration of operator or owner; when; reinstatement; proof of financial responsibility.**

(1) Whenever the department, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction, the department shall also suspend all registrations in the name of such person, except that it shall not suspend such registrations, unless otherwise required by law, if such person has previously given or shall immediately give and shall maintain for three years proof of financial responsibility.

(2) Whenever the department, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction, and such person was not the owner of the motor vehicle used at the time of the violation resulting in the conviction, the department shall also suspend the license and all registrations in the name of the owner of the motor vehicle so used, if such vehicle was operated with such owner's permission or consent at the time of the violation, unless such owner has previously given or shall immediately give and maintain for three years proof of financial responsibility. This subsection shall not apply to such owner if he or she had in effect at the time of the violation an automobile liability policy or bond with respect to such motor vehicle; or if there was then in effect an automobile liability policy or bond with respect to the operation of the motor vehicle; or if the liability of such operator or owner was then, in the judgment of the department, covered by any other form of liability insurance policy or bond; or if the owner or operator was then qualified as a self-insurer under sections 60-562 to 60-564.

(3) Whenever the department, pursuant to any law of this state, suspends or revokes the license of any person after having received a record of conviction of the licensee, such person shall not be eligible for reinstatement of his or her driving privilege until he or she shall give and thereafter maintain proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 24, p. 493; Laws 1959, c. 298, § 13, p. 1117; Laws 1975, LB 264, § 1; Laws 1999, LB 704, § 43.

**60-524.01 Repealed. Laws 1961, c. 319, § 8.**

**60-524.02 Repealed. Laws 1961, c. 319, § 8.**



**60-525 Convictions; suspension of license and registration; renewal; financial responsibility.**

Where proof of financial responsibility is required by section 60-524 such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and shall maintain for three years proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 25, p. 493; Laws 1959, c. 298, § 15, p. 1119; Laws 1963, c. 363, § 1, p. 1158.

A license to operate a motor vehicle when suspended or revoked retains that status until a new license is procured. State v. Smith, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-526 License and registration; conviction without a license; subsequent issuance of license or registration; proof of financial responsibility.**

If a person is not licensed, but by final order or judgment is convicted of any offense requiring the suspension or revocation of license, or for operating a motor vehicle upon the highways without being licensed to do so, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 26, p. 493; Laws 1959, c. 298, § 16, p. 1120.

**60-526.01 Repealed. Laws 1963, c. 364, § 1.****60-527 Nonresident's operating privilege; suspension or revocation; conviction or forfeiture of bail; proof of financial responsibility for removal.**

Whenever the department suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and shall maintain for three years proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 27, p. 494.

**60-528 Proof of financial responsibility; proof; enumerated; copy provided.**

Proof of financial responsibility shall be furnished for each motor vehicle registered by any person required to give such proof by filing:

- (1) A certificate of insurance as provided in section 60-529 or 60-531;
- (2) A bond as provided in sections 60-547 and 60-548;
- (3) A certificate of deposit of money or securities as provided in section 60-549; or
- (4) A certificate of self-insurance as provided in sections 60-562 to 60-564.

The department shall issue to any person providing the proof of financial responsibility a copy of any filing described in subdivision (2), (3), or (4) of this section with the department's seal affixed to the copy.

**Source:** Laws 1949, c. 178, § 28, p. 494; Laws 1985, LB 404, § 2; Laws 1993, LB 112, § 39; Laws 1995, LB 37, § 10.

An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over

the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. *Equity Mut. Ins. Co. v. Allstate Ins. Co.*, 190 Neb. 515, 209 N.W.2d 592 (1973).

**60-529 Proof of financial responsibility; certificate of insurance; contents.**

Proof of financial responsibility may be furnished by (1) filing with the department the written certificate of any insurance carrier, duly authorized to do business in this state, or (2) electronic transmission of a certificate by an insurance carrier, duly authorized to do business in this state, certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility, also known as an SR-22 certificate. Such certificate shall give the effective date of the certificate and designate, by explicit description or by appropriate reference, all motor vehicles covered thereby unless the policy is issued to a person who is not the owner of a motor vehicle. A certificate of insurance for fleet vehicles may include, as an appropriate reference, a designation that the insurance coverage is applicable to all vehicles owned by the named insured, or wording of similar effect, in lieu of an explicit description.

**Source:** Laws 1949, c. 178, § 29, p. 494; Laws 1999, LB 704, § 44; Laws 2004, LB 911, § 1.

An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over

the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. *Equity Mut. Ins. Co. v. Allstate Ins. Co.*, 190 Neb. 515, 209 N.W.2d 592 (1973).

**60-530 Proof of financial responsibility; certificate of insurance; designation of motor vehicle.**

No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

**Source:** Laws 1949, c. 178, § 30, p. 494.

An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over

the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. *Equity Mut. Ins. Co. v. Allstate Ins. Co.*, 190 Neb. 515, 209 N.W.2d 592 (1973).

**60-531 Proof of financial responsibility; nonresident; certificate of insurance; requirements.**

The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in this state or any other state in which the motor vehicle or motor vehicles described in such certificate are registered or, if such nonresident does not own a motor vehicle, in the state in which the insured resides. The department shall accept the same upon condition that the insurance carrier complies with the following provisions with respect to the policies so certified: (1) The insurance carrier shall execute an acknowledgment that the carrier shall be amenable to process issued by a court of this state in any action upon such policy; and (2) the insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

**Source:** Laws 1949, c. 178, § 31, p. 494; Laws 1983, LB 447, § 79; Laws 1997, LB 10, § 3.

An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over

the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. *Equity Mut. Ins. Co. v. Allstate Ins. Co.*, 190 Neb. 515, 209 N.W.2d 592 (1973).

**60-532 Insurance carrier not authorized to transact business in state; defaults; effect.**

If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the department shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

**Source:** Laws 1949, c. 178, § 32, p. 495.

**60-533 Motor vehicle liability policy, defined.**

A motor vehicle liability policy, as said term is used in sections 60-501 to 60-569, shall mean an owner's or an operator's policy of liability insurance, certified as provided in sections 60-529 to 60-531 as proof of financial responsibility, and issued, except as otherwise provided in section 60-531 by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

**Source:** Laws 1949, c. 178, § 33, p. 495.

**60-534 Policy; contents; limits.**

Such motor vehicle liability policy shall (1) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted and (2) insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

**Source:** Laws 1949, c. 178, § 34, p. 495; Laws 1959, c. 299, § 3, p. 1126; Laws 1965, c. 389, § 1, p. 1245; Laws 1973, LB 365, § 3; Laws 1983, LB 253, § 3; Laws 1999, LB 704, § 45.

Under this section, the omnibus clause applies to only owners and operators of motor vehicles who must certify their motor vehicle liability policy pursuant to sections 60-528 to 60-531 in order to reinstate an operator's license or registration which has been suspended or revoked for failure to pay a judgment. *Universal Underwriters Ins. Co. v. Farm Bureau Ins. Co.*, 243 Neb. 194, 498 N.W.2d 333 (1993).

Act concerning a third-party claim requires an owner's SR22 policy to cover risk pertaining to automobile that has replaced automobile designated in policy. *Smith v. Canal Ins. Co.*, 184 Neb. 866, 173 N.W.2d 36 (1969).

Amendment in 1965 to section 60-561 made this section applicable only to automobile liability policies which have been

certified as proof of financial responsibility. *State Farm Mut. Ins. Co. v. Pierce*, 182 Neb. 805, 157 N.W.2d 399 (1968).

Statutory omnibus clause is provided by this section. *Iowa Mut. Ins. Co. v. Meckna*, 180 Neb. 516, 144 N.W.2d 73 (1966).

This section is controlling over inconsistent provision of insurance policy. *Protective Fire and Cas. Co. v. Cornelius*, 176 Neb. 75, 125 N.W.2d 179 (1963).

A third party operating a named insured's vehicle becomes an additional insured party when given express or implied permission to operate the vehicle from an initial permittee. Implied permission by a named insured depends upon what actually was said and done prior to the accident. Because the essence of the

implied permission doctrine is the course of conduct and relationship between the insured and another driver, the facts that two drivers were friends and periodically borrowed each other's cars without objection justified a finding of implied permission. *State Farm Mut. Ins. Cos. v. AMCO Ins. Co.*, 9 Neb. App. 872, 621 N.W.2d 553 (2001).

Purpose of omnibus clause is to fix the liability of additional insureds. *Universal Underwriters Ins. Co. v. Wagner*, 367 F.2d 866 (8th Cir. 1966).

Question of permission by named insured to use of automobile by another is to be resolved as a matter of fact. *Bekaert v. State Farm Mutual Auto Ins. Co.*, 230 F.2d 127 (8th Cir. 1956).

### **60-535 Policy; coverage for nonowned vehicle.**

Such motor vehicle liability policy shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth in section 60-534 with respect to a motor vehicle liability policy.

**Source:** Laws 1949, c. 178, § 35, p. 496; Laws 1965, c. 389, § 2, p. 1246.

This section applies only to policies which have been filed with the Nebraska Department of Motor Vehicles and certified as proof of future financial responsibility pursuant to the requirements of the Motor Vehicle Safety Responsibility Act. *Alied Mut. Ins. Co. v. Musil*, 242 Neb. 64, 493 N.W.2d 171 (1992).

This section controls over a conflicting exclusionary clause in operator's policy of liability insurance. *Rudder v. American Standard Ins. Co. of Wisconsin*, 187 Neb. 778, 194 N.W.2d 175 (1972).

### **60-536 Policy; requirements.**

Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in sections 60-501 to 60-569 as respects bodily injury and death or property damage, or both, and is subject to all the provisions of sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 36, p. 496.

### **60-537 Policy; provisions excluded.**

Such motor vehicle liability policy shall not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

**Source:** Laws 1949, c. 178, § 37, p. 496; Laws 1986, LB 811, § 140.

### **60-538 Policy; mandatory provisions.**

Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein: (1) The liability of the insurance carrier with respect to the insurance required by sections 60-501 to 60-569 shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy; (2) the satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage; (3) the insurance carrier shall have the right to settle any claim covered by the policy and, if such settlement is made in good faith, the amount thereof shall be deductible from

the limits of liability specified in subsection (2) of section 60-534; and (4) the policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of sections 60-501 to 60-569 shall constitute the entire contract between the parties.

**Source:** Laws 1949, c. 178, § 38, p. 496.

Operation of newly acquired automobile without notifying the insurer does not constitute defense against third-party claim. *Smith v. Canal Ins. Co.*, 184 Neb. 866, 173 N.W.2d 36 (1969).

The first accident is not within the purview of this act. *Reserve Ins. Co. v. Aguilera*, 181 Neb. 605, 150 N.W.2d 114 (1967).

Coverage of policy not certified was not limited by lower limits of statute. *Universal Underwriters Ins. Co. v. Wagner*, 367 F.2d 866 (8th Cir. 1966).

**60-539 Policy; additional coverage; not covered in term.**

Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of sections 60-501 to 60-569. With respect to a policy which grants such excess or additional coverage the term motor vehicle liability policy shall apply only to that part of the coverage which is required by sections 60-533 to 60-543.

**Source:** Laws 1949, c. 178, § 39, p. 497.

**60-540 Policy; permissible provisions.**

Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 40, p. 497.

**60-541 Policy; prorating of insurance.**

Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

**Source:** Laws 1949, c. 178, § 41, p. 497.

**60-542 Policy; one or more insurance carriers.**

The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

**Source:** Laws 1949, c. 178, § 42, p. 498.

**60-543 Policy; binder issued pending issuance of policy.**

Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

**Source:** Laws 1949, c. 178, § 43, p. 498.

**60-544 Policy; notice of cancellation or termination of certified policy.**

When an insurance carrier has certified a motor vehicle liability policy under sections 60-529 to 60-531, the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified is mailed to the insured. If the insurance is not

reinstated by the insured within ten days, the insurance carrier shall provide notice to the department by filing a notice of the cancellation or termination in the office of the department. A motor vehicle liability policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

**Source:** Laws 1949, c. 178, § 44, p. 498; Laws 1999, LB 704, § 46.

**60-545 Sections; applicability to policies issued under other laws.**

Sections 60-501 to 60-569 shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform to the requirements of sections 60-501 to 60-569, may be certified as proof of financial responsibility under sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 45, p. 498.

**60-546 Sections; applicability to policies on employee use of nonowned vehicles.**

Sections 60-501 to 60-569 shall not be held to apply to or affect policies solely insuring the insured named in the policy against liability resulting from the maintenance or use, by persons in the employ of the insured or on his behalf, of motor vehicles not owned by the insured.

**Source:** Laws 1949, c. 178, § 46, p. 498.

**60-547 Bond; proof of financial responsibility.**

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties who each own real estate within this state, which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for the payment of the amounts specified in subdivision (14) of section 60-501. It shall be filed with the department and shall not be cancelable except after ten days' written notice to the department. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the department in the office of the register of deeds of the county where such real estate shall be located.

**Source:** Laws 1949, c. 178, § 47, p. 498; Laws 2010, LB650, § 34; Laws 2011, LB289, § 28; Laws 2012, LB1155, § 17; Laws 2019, LB156, § 15.

**60-548 Bond; action on in name of state; when.**

If such a judgment, rendered against the principal on such bond, shall not be satisfied within sixty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions

in the name of the state against the company or persons executing such bond, including an action in equity to foreclose any lien that may exist upon the real estate of a person who has executed such bond.

**Source:** Laws 1949, c. 178, § 48, p. 499.

**60-549 Deposits with State Treasurer; amount required; proof of financial responsibility.**

Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named in the certificate has deposited with him or her seventy-five thousand dollars per vehicle in cash or securities such as may legally be purchased by savings banks or for trust funds of a market value of seventy-five thousand dollars. The State Treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless it is accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

**Source:** Laws 1949, c. 178, § 49, p. 499; Laws 1959, c. 299, § 4, p. 1126; Laws 1975, LB 264, § 2; Laws 1988, LB 1051, § 1.

**60-550 Cash deposits with State Treasurer; execution; not subject to attachment.**

Such deposit shall be held by the State Treasurer to satisfy, in accordance with the provisions of sections 60-501 to 60-569, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

**Source:** Laws 1949, c. 178, § 50, p. 499.

**60-550.01 Cash deposits with State Treasurer; judgment creditor; payment.**

Upon receipt by the department of a certified copy of a final judgment secured against a depositor, such judgment having been granted for damages arising out of the accident which caused the depositing of security under the Motor Vehicle Safety Responsibility Act, the department shall, by voucher addressed to the Director of Administrative Services, cause the payment of the deposited security to the judgment creditor in accordance with the terms of the judgment and, if it appears there is no further liability to any persons arising out of such accident, the department shall, upon its voucher to the Director of Administrative Services, cause the balance remaining, if any, to be returned to the depositor or his or her personal representative.

**Source:** Laws 1953, c. 220, § 1, p. 774; Laws 1957, c. 366, § 46, p. 1279; Laws 2021, LB174, § 27.  
Effective date August 28, 2021.

**60-551 Owner may give proof for others.**

Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the department shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The department shall designate the restrictions imposed by this section on the back of such person's license.

**Source:** Laws 1949, c. 178, § 51, p. 500.

**60-552 Substitution of proof of financial responsibility.**

The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct and the State Treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 52, p. 500.

**60-553 Additional proof required; suspend license and registration until furnished.**

Whenever any proof of financial responsibility, filed under the provisions of sections 60-501 to 60-569, no longer fulfills the purposes for which required, the department shall, for the purpose of sections 60-501 to 60-569, require other proof as required by sections 60-501 to 60-569 and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such other proof.

**Source:** Laws 1949, c. 178, § 53, p. 500.

**60-554 Duration of proof; when proof may be canceled or returned; waiver of requirement of filing.**

(1) The department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the department shall direct and the State Treasurer shall return to the person entitled thereto any money or securities, deposited pursuant to the Motor Vehicle Safety Responsibility Act as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

(a) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration, or nonresident's operating privilege of the person by or for whom such proof was furnished;

(b) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) In the event the person who has given proof surrenders his or her license and registration to the department, except that the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages, upon a liability covered by such proof, is then pending or a judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities



has, within two years immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that the applicant has been released from all of his or her liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

(2) Whenever any person, whose proof has been canceled or returned under subdivision (1)(c) of this section applies for a license or registration within a period of three years from the date such proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period.

**Source:** Laws 1949, c. 178, § 54, p. 500; Laws 1959, c. 298, § 18, p. 1120; Laws 2021, LB174, § 28.  
Effective date August 28, 2021.

#### (e) VIOLATIONS

##### **60-555 Transfer of registration to defeat purpose of sections; prohibited.**

If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the motor vehicle in respect of which such registration was issued registered in any other name after the date of the accident until the department is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of sections 60-501 to 60-569. Nothing in this section shall be held to apply to or affect the registration of any motor vehicle sold by a person who, pursuant to the terms or conditions of any written instrument giving a right of repossession, has exercised such right and has repossessed such motor vehicle from a person whose registration has been suspended under the provisions of sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 55, p. 501.

##### **60-556 Surrender of license and registration; failure; department to obtain possession; peace or law enforcement officer; duties.**

(1) Any person (a) whose license or registration shall have been suspended as herein provided, (b) whose policy of insurance or bond, when required under sections 60-501 to 60-569, shall have been canceled or terminated, or (c) who shall neglect to furnish other proof upon the request of the department shall immediately return his or her license and registration to the department. If any person shall fail to return to the department the license or registration as provided herein, the department shall forthwith direct any peace officer or authorized representative of the department to secure possession thereof and to return the same to the department.

(2) It shall be the duty of the peace officer or law enforcement officer who is directed to secure possession of the license and registration under subsection (1) of this section to make every reasonable effort to secure the license and registration and return such to the department or to show good cause, as that is determined by the department, why such license or registration is unable to be returned.

**Source:** Laws 1949, c. 178, § 56, p. 502; Laws 1953, c. 207, § 10, p. 727; Laws 1980, LB 672, § 2; Laws 1981, LB 174, § 3.

**60-557 License, registration, or nonresident's operating privilege; operating motor vehicle while suspended or revoked; effect.**

Any person whose license, registration, or nonresident's operating privilege has been suspended or revoked under the Motor Vehicle Safety Responsibility Act and who, during such suspension or revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under the act, shall be subject to section 60-4,108.

**Source:** Laws 1949, c. 178, § 57, p. 502; Laws 1959, c. 293, § 6, p. 1100; Laws 1989, LB 25, § 1; Laws 1989, LB 285, § 131; Laws 2001, LB 38, § 41.

This section sets forth the penalty for violation of Safety Responsibility Act. State v. Ruggiere, 180 Neb. 869, 146 N.W.2d 373 (1966).

**60-558 Failure to return license or registration; penalty.**

Any person willfully failing to return the license or registration, as required in section 60-556, shall be guilty of a Class III misdemeanor.

**Source:** Laws 1949, c. 178, § 58, p. 502; Laws 1977, LB 39, § 85.

**60-559 Notice; forgery; penalty.**

Any person who shall forge or, without authority, sign any notice, provided for under sections 60-507 to 60-509, that a policy or bond is in effect, or any evidence of proof of financial responsibility, or who files or offers for filing any such notice or evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a Class I misdemeanor.

**Source:** Laws 1949, c. 178, § 59, p. 502; Laws 1977, LB 39, § 86.

**60-560 Violations; penalty.**

Any person who shall violate any provision of sections 60-501 to 60-569 for which no penalty is otherwise provided shall be guilty of a Class III misdemeanor.

**Source:** Laws 1949, c. 178, § 60, p. 503; Laws 1977, LB 39, § 87.

## (f) GENERAL PROVISIONS

**60-561 Act; applicability.**

The Motor Vehicle Safety Responsibility Act shall not apply with respect to any motor vehicle owned by the United States, the State of Nebraska, any political subdivision of this state, or any municipality therein. Except for section 60-551, such act shall not apply with respect to any motor vehicle which is subject to the requirements of section 75-307, nor shall sections 60-516 to 60-544 apply to any automobile liability policy which has not been certified as provided in sections 60-528 to 60-531 as proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 61, p. 503; Laws 1965, c. 389, § 3, p. 1246; Laws 1987, LB 149, § 1; Laws 1993, LB 575, § 46.

Amendment in 1965 to this section limited application of proof of financial responsibility. State Farm Mut. Ins. Co. v. Motor Vehicle Safety Responsibility Act to policies certified as Pierce, 182 Neb. 805, 157 N.W.2d 399 (1968).

Amendment of this section in 1965 operated prospectively only. *Universal Underwriters Ins. Co. v. Wagner*, 367 F.2d 866 (8th Cir. 1966).

**60-562 Self-insurer; qualifications.**

Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department, as provided in section 60-563.

**Source:** Laws 1949, c. 178, § 62, p. 503.

**60-563 Self-insurer; certificate; issuance.**

The department may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

**Source:** Laws 1949, c. 178, § 63, p. 503.

**60-564 Self-insurer; certificate; cancellation; hearing; grounds.**

Upon not less than five days' notice and a hearing pursuant to such notice, the department may cancel a certificate of self-insurance upon reasonable grounds. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

**Source:** Laws 1949, c. 178, § 64, p. 503.

**60-565 Sections; supplemental to other laws.**

Sections 60-501 to 60-569 shall in no respect be considered as a repeal of the state motor vehicle law, but shall be construed as supplemental thereto.

**Source:** Laws 1949, c. 178, § 65, p. 503.

**60-566 Repealed. Laws 1961, c. 284, § 1.**

**60-567 Actions; cumulative.**

Nothing in sections 60-501 to 60-569 shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

**Source:** Laws 1949, c. 178, § 67, p. 504.

**60-568 Sections, how construed.**

Sections 60-501 to 60-569 shall be so interpreted and construed as to effectuate their general purpose to make uniform the laws of those states which enact them.

**Source:** Laws 1949, c. 178, § 68, p. 504.

**60-569 Act, how cited.**

Sections 60-501 to 60-569 may be cited as the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 1949, c. 178, § 69, p. 504.

**60-570 Repealed. Laws 1995, LB 37, § 16.**

(g) UNDERINSURED MOTORIST INSURANCE COVERAGE

- 60-571 Transferred to section 44-6401.**
- 60-572 Transferred to section 44-6402.**
- 60-573 Transferred to section 44-6404.**
- 60-574 Transferred to section 44-6406.**
- 60-575 Transferred to section 44-6407.**
- 60-576 Transferred to section 44-6403.**
- 60-577 Transferred to section 44-6408.**
- 60-578 Transferred to section 44-6409.**
- 60-579 Transferred to section 44-6410.**
- 60-580 Transferred to section 44-6411.**
- 60-581 Transferred to section 44-6412.**
- 60-582 Transferred to section 44-6413.**

**ARTICLE 6**

**NEBRASKA RULES OF THE ROAD**

**Cross References**

**Motor carriers:**

Motor vehicle fuel carriers, regulations, see Chapter 66, article 5.  
 Regulations, see Chapter 75, article 3.

**Motor vehicles:**

Department of Motor Vehicles, general provisions, see Chapter 60, article 15.  
 Financial responsibility requirements, see section 60-501 et seq.  
 Operators' licenses, see section 60-462 et seq.  
 Permit to move mobile homes, see section 77-3708.  
 Taxation, see sections 60-3,184 to 60-3,190.

**Nebraska State Patrol**, see section 81-2001 et seq.

**Railroad crossings**, regulation of, see section 74-1334.

**Shooting from highways prohibited**, when, see section 37-513.

**Shotguns**, loaded, carrying in vehicle prohibited, see section 37-522.

**Signs along highways**, see sections 39-102, 39-201.01 to 39-226, 39-1320, and 69-1701 et seq.

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60-603.	Rules; not retroactive.
60-604.	Construction of rules.
60-605.	Definitions, where found.
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60-610.	Authorized emergency vehicle, defined.
60-610.01.	Autocycle, defined.
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60-613.	Business district, defined.
60-614.	Cabin trailer, defined.
60-614.01.	Continuous alcohol monitoring device, defined.
60-615.	Controlled-access highway, defined.
60-616.	Crosswalk, defined.
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60-618.	Divided highway, defined.
60-618.01.	Expressway, defined.
60-618.02.	Electric personal assistive mobility device, defined.
60-619.	Farm tractor, defined.
60-620.	Final conviction, defined.
60-620.01.	Former military vehicle, defined.
60-621.	Freeway, defined.
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60-622.01.	Golf car vehicle, defined.
60-623.	Grade separation, defined.
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60-624.01.	Idle reduction technology, defined.
60-625.	Implement of husbandry, defined.
60-625.01.	Impoundment of operator's license, defined.
60-626.	Interchange, defined.
60-627.	Intersection, defined.
60-628.	Local authority, defined.
60-628.01.	Low-speed vehicle, defined.
60-629.	Mail, defined.
60-630.	Maintenance, defined.
60-631.	Manual, defined.
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60-658.01.	School crossing zone, defined.
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- (d) ACCIDENTS AND ACCIDENT REPORTING
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60-696. Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.  
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60-699. Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; confidential information; violation; penalty.  
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60-6,103. Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information.  
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## (a) GENERAL PROVISIONS

**60-601 Rules, how cited.**

Sections 60-601 to 60-6,383 shall be known and may be cited as the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 122; Laws 1989, LB 285, § 9; Laws 1992, LB 291, § 14; Laws 1992, LB 872, § 5; R.S.Supp.,1992, § 39-6,122; Laws 1993, LB 370, § 97; Laws 1993, LB 564, § 14; Laws 1996, LB 901, § 3; Laws 1996, LB 1104, § 2; Laws 1997, LB 91, § 1; Laws 1998, LB 309, § 12; Laws 1999, LB 585, § 3; Laws 2001, LB 38, § 42; Laws 2002, LB 1105, § 448; Laws 2002, LB 1303, § 10; Laws 2004, LB 208, § 8; Laws 2006, LB 853, § 14; Laws 2006, LB 925, § 4; Laws 2008, LB736, § 6; Laws 2008, LB756, § 18; Laws 2009, LB92, § 1; Laws 2010, LB650, § 35; Laws 2010, LB945, § 2; Laws 2011, LB164, § 1; Laws 2011, LB289, § 29; Laws 2011, LB667, § 32; Laws 2011, LB675, § 4; Laws 2012, LB751, § 43; Laws 2012, LB1155, § 18; Laws 2014, LB1039, § 1; Laws 2015, LB231, § 27; Laws 2015, LB641, § 1; Laws 2016, LB977, § 20; Laws 2018, LB909, § 93; Laws 2018, LB1009, § 3; Laws 2019, LB81, § 1; Laws 2019, LB156, § 16.

Sections 39-601 to 39-6,122 do not apply to the users of a hospital drive that does not fit the statutory definition of a "highway" found in section 39-602. However, common law rules applicable to users of public ways do apply. *Bassinger v. Agnew*, 206 Neb. 1, 290 N.W.2d 793 (1980) (pursuant to Laws

1993, LB 370, sections 97 to 470, language from sections 39-601 to 39-6,122 was placed in sections 60-601 to 60-6,374. Pursuant to Laws 1993, LB 370, section 120, "highway" is now defined in section 60-624).

**60-602 Declaration of legislative purpose.**

The purposes and policies of the Nebraska Rules of the Road are:

- (1) To make more uniform highway traffic laws between states;
- (2) To educate drivers so that they can develop instinctive habits resulting in safer emergency reactions;
- (3) To educate drivers and pedestrians of all ages to more readily understand each other's responsibilities and privileges when all obey the same rules;
- (4) To promote economic savings by relieving congestion and confusion in traffic;

(5) To increase the efficiency of streets and highways by the application of uniform traffic control devices;

(6) To reduce the huge annual loss of life and property which occurs on Nebraska's highways; and

(7) To assist traffic law enforcement by encouraging voluntary compliance with law through uniform rules.

**Source:** Laws 1973, LB 45, § 1; R.S.1943, (1988), § 39-601; Laws 1993, LB 370, § 98.

**60-603 Rules; not retroactive.**

The Nebraska Rules of the Road as enacted by Laws 1993, LB 370, shall not have a retroactive effect and shall not apply to any traffic accident, to any cause of action arising out of a traffic accident or judgment arising therefrom, or to any violation of the motor vehicle laws of this state occurring prior to January 1, 1994. All violations, offenses, prosecutions, and criminal appeals under prior law are saved and preserved. All civil causes of action based upon or under prior law arising out of traffic accidents prior to such date and judgments thereon or appeals therefrom are saved and preserved.

**Source:** Laws 1973, LB 45, § 120; R.S.1943, (1988), § 39-6,120; Laws 1993, LB 370, § 99.

**60-604 Construction of rules.**

The Nebraska Rules of the Road shall be so interpreted and construed as to effectuate their general purpose to make uniform the laws relating to motor vehicles.

**Source:** Laws 1973, LB 45, § 121; R.S.1943, (1988), § 39-6,121; Laws 1993, LB 370, § 100.

Sections 39-601 to 39-6,122 do not apply to the users of a hospital drive that does not fit the statutory definition of a "highway" found in section 39-602. However, common law rules applicable to users of public ways do apply. *Bassinger v. Agnew*, 206 Neb. 1, 290 N.W.2d 793 (1980) (pursuant to Laws

1993, LB 370, sections 97 to 470, language from sections 39-601 to 39-6,122 was placed in sections 60-601 to 60-6,374. Pursuant to Laws 1993, LB 370, section 120, "highway" is now defined in section 60-624).

**60-605 Definitions, where found.**

For purposes of the Nebraska Rules of the Road, the definitions found in sections 60-606 to 60-676 shall be used.

**Source:** Laws 1993, LB 370, § 101; Laws 1996, LB 901, § 4; Laws 1997, LB 91, § 2; Laws 2001, LB 38, § 43; Laws 2006, LB 853, § 15; Laws 2006, LB 925, § 5; Laws 2008, LB756, § 19; Laws 2010, LB650, § 36; Laws 2011, LB289, § 30; Laws 2012, LB1155, § 19; Laws 2015, LB231, § 28; Laws 2018, LB1009, § 4; Laws 2019, LB81, § 2; Laws 2019, LB156, § 17.

**60-606 Acceleration or deceleration lane, defined.**

Acceleration or deceleration lane shall mean a supplementary lane of a highway lane for traffic, which adjoins the traveled lanes of a highway and connects an approach or exit road with such highway.

**Source:** Laws 1993, LB 370, § 102.



**60-607 Alley, defined.**

Alley shall mean a highway intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic.

**Source:** Laws 1993, LB 370, § 103.

**60-608 Approach or exit road, defined.**

Approach or exit road shall mean any highway or ramp designed and used solely for the purpose of providing ingress or egress to or from an interchange or rest area of a highway. An approach road shall begin at the point where it intersects with any highway not a part of the highway for which such approach road provides access and shall terminate at the point where it merges with an acceleration lane of a highway. An exit road shall begin at the point where it intersects with a deceleration lane of a highway and shall terminate at the point where it intersects any highway not a part of a highway from which the exit road provides egress.

**Source:** Laws 1993, LB 370, § 104.

**60-609 Arterial highway, defined.**

Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route.

**Source:** Laws 1993, LB 370, § 105.

**60-610 Authorized emergency vehicle, defined.**

Authorized emergency vehicle shall mean such fire department vehicles, police vehicles, rescue vehicles, and ambulances as are publicly owned, such other publicly or privately owned vehicles as are designated by the Director of Motor Vehicles, and such publicly owned military vehicles of the National Guard as are designated by the Adjutant General pursuant to section 55-133.

**Source:** Laws 1993, LB 370, § 106; Laws 2008, LB196, § 2.

**60-610.01 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) having antilock brakes, (4) designed to be controlled with a steering wheel and pedals, and (5) in which the operator and passenger ride either side by side or in tandem in a seating area that is equipped with a manufacturer-installed three-point safety belt system for each occupant and that has a seating area that either (a) is completely enclosed and is equipped with manufacturer-installed airbags and a manufacturer-installed roll cage or (b) is not completely enclosed and is equipped with a manufacturer-installed rollover protection system.

**Source:** Laws 2015, LB231, § 29; Laws 2018, LB909, § 94.

**60-611 Bicycle, defined.**

Bicycle shall mean (1) every device propelled solely by human power, upon which any person may ride, and having two tandem wheels either of which is more than fourteen inches in diameter or (2) a device with two or three wheels, fully operative pedals for propulsion by human power, and an electric motor with a capacity not exceeding seven hundred fifty watts which produces no

more than one brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than twenty miles per hour on level ground.

**Source:** Laws 1993, LB 370, § 107; Laws 2015, LB95, § 10.

**60-612 Bus, defined.**

Bus shall mean every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

**Source:** Laws 1993, LB 370, § 108.

**60-613 Business district, defined.**

Business district shall mean the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including, but not limited to, hotels, banks, office buildings, railroad stations, or public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of a highway.

**Source:** Laws 1993, LB 370, § 109.

**60-614 Cabin trailer, defined.**

Cabin trailer shall mean a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, whether used for such purposes or instead permanently or temporarily for the advertising, sale, display, or promotion of merchandise or services or for any other commercial purpose except transportation of property for hire or transportation of property for distribution by a private carrier. Cabin trailer shall not mean a trailer or semitrailer which is permanently attached to real estate. There shall be three classes of cabin trailers:

(1) Camping trailer which shall include cabin trailers one hundred two inches or less in width and forty feet or less in length and adjusted mechanically smaller for towing;

(2) Mobile home which shall include cabin trailers more than one hundred two inches in width or more than forty feet in length; and

(3) Travel trailer which shall include cabin trailers not more than one hundred two inches in width nor more than forty feet in length from front hitch to rear bumper, except as provided in subdivision (2)(k) of section 60-6,288.

**Source:** Laws 1993, LB 370, § 110; Laws 1993, LB 575, § 4; Laws 2001, LB 376, § 2.

A manufactured home is a class of cabin trailer for purposes of this section. Green Tree Fin. Servicing v. Sutton, 264 Neb. 533, 650 N.W.2d 228 (2002).

**60-614.01 Continuous alcohol monitoring device, defined.**

Continuous alcohol monitoring device means a portable device capable of automatically and periodically testing and recording alcohol consumption levels and automatically and periodically transmitting such information and tamper attempts regarding such device, regardless of the location of the person being monitored.

**Source:** Laws 2006, LB 925, § 6.

**60-615 Controlled-access highway, defined.**

Controlled-access highway shall mean every highway or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or egress from except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway.

**Source:** Laws 1993, LB 370, § 111.

**60-616 Crosswalk, defined.**

Crosswalk shall mean:

- (1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of such roadway measured from the curbs or, in the absence of curbs, from the edge of the roadway; or
- (2) Any portion of a roadway at an intersection or elsewhere distinctly designated by competent authority and marked for pedestrian crossing by lines, signs, or other devices.

**Source:** Laws 1993, LB 370, § 112.

Crosswalk defined and considered as worded in former section. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

**60-617 Daytime, defined.**

Daytime shall mean that period of time between sunrise and sunset.

**Source:** Laws 1993, LB 370, § 113.

**60-618 Divided highway, defined.**

Divided highway shall mean a highway with separated roadways for traffic in opposite directions.

**Source:** Laws 1993, LB 370, § 114.

**60-618.01 Expressway, defined.**

Expressway shall mean a divided arterial highway designed primarily for through traffic with full or partial control of access which may have grade separations at intersections.

**Source:** Laws 1996, LB 901, § 5.

**60-618.02 Electric personal assistive mobility device, defined.**

Electric personal assistive mobility device shall mean a self-balancing, two-nontandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

**Source:** Laws 2002, LB 1105, § 449.

**60-619 Farm tractor, defined.**

Farm tractor shall mean every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

**Source:** Laws 1993, LB 370, § 115.

**60-620 Final conviction, defined.**

Final conviction shall mean the final determination of all questions of fact and of law.

**Source:** Laws 1993, LB 370, § 116.

**60-620.01 Former military vehicle, defined.**

Former military vehicle means a motor vehicle that was manufactured for use in any country's military forces and is maintained to accurately represent its military design and markings, regardless of the vehicle's size or weight, but is no longer used, or never was used, by a military force.

**Source:** Laws 2019, LB156, § 18.

**60-621 Freeway, defined.**

Freeway shall mean a divided arterial highway designed primarily for through traffic with full control of access and with grade separations at all intersecting road crossings, including all interchanges and approach and exit roads thereto.

**Source:** Laws 1993, LB 370, § 117.

**60-622 Full control of access, defined.**

Full control of access shall mean that the right of owners or occupants of abutting land or other persons to access or view is fully controlled by public authority having jurisdiction and that such control is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings or intersections at grade or direct private driveway connections.

**Source:** Laws 1993, LB 370, § 118.

**60-622.01 Golf car vehicle, defined.**

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, is designed and manufactured for operation on a golf course for sporting and recreational purposes, and is not being operated within the boundaries of a golf course.

**Source:** Laws 2012, LB1155, § 20.

**60-623 Grade separation, defined.**

Grade separation shall mean a crossing of two highways at different levels.

**Source:** Laws 1993, LB 370, § 119.

**60-624 Highway, defined.**

Highway shall mean the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

**Source:** Laws 1993, LB 370, § 120.

A hospital driveway which is privately maintained and subject to use by patients, visitors, and others having legitimate business at the hospital is not a "highway," within the meaning of this section and, therefore, the rules of the road as set forth in sections 39-601 to 39-6,122 do not apply to its use. However, common law applicable to users of public ways does apply.

*Bassinger v. Agnew*, 206 Neb. 1, 290 N.W.2d 793 (1980) (sections 39-601 to 39-6,122 were transferred to Chapter 60, article 6).

Where highway includes two roadways thirty feet apart, each crossing thereof is a separate intersection. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

**60-624.01 Idle reduction technology, defined.**

Idle reduction technology means any device or system of devices that is installed on a heavy-duty diesel-powered on-highway truck or truck-tractor and is designed to provide to such truck or truck-tractor those services, such as heat, air conditioning, or electricity, that would otherwise require the operation of the main drive engine while the truck or truck-tractor is temporarily parked or remains stationary.

**Source:** Laws 2008, LB756, § 20.

**60-625 Implement of husbandry, defined.**

Implement of husbandry shall mean every vehicle or implement designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and used primarily off any highway.

**Source:** Laws 1993, LB 370, § 121; Laws 2000, LB 1361, § 1.

**60-625.01 Impoundment of operator's license, defined.**

Impoundment of operator's license shall have the meaning found in section 60-470.01.

**Source:** Laws 2001, LB 38, § 44.

**60-626 Interchange, defined.**

Interchange shall mean a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection.

**Source:** Laws 1993, LB 370, § 122.

**60-627 Intersection, defined.**

Intersection shall mean the area embraced within the prolongation or connection of the lateral curb lines or, if there are no lateral curb lines, the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. When a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a

separate intersection. The junction of an alley with a highway shall not constitute an intersection.

**Source:** Laws 1993, LB 370, § 123.

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. *Reese v. Mayer*, 198 Neb. 499, 253 N.W.2d 317 (1977).

**60-628 Local authority, defined.**

Local authority shall mean every county, municipal, and other local board or body having power to enact laws, rules, or regulations relating to traffic under the Constitution of Nebraska and the laws of this state and generally including the directors of state institutions, the Game and Parks Commission, and all natural resources districts with regard to roads not a part of the state highway system and within the limits of such institution, of an area under Game and Parks Commission control, or of an area owned or leased by a natural resources district, but outside the limits of any incorporated city or village.

**Source:** Laws 1993, LB 370, § 124.

**60-628.01 Low-speed vehicle, defined.**

Low-speed vehicle means a (1) four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2021, or (2) three-wheeled motor vehicle (a) whose maximum speed attainable is not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) which is equipped with a windshield and an occupant protection system. A motorcycle with a sidecar attached is not a low-speed vehicle.

**Source:** Laws 2011, LB289, § 31; Laws 2016, LB929, § 10; Laws 2017, LB263, § 72; Laws 2018, LB909, § 95; Laws 2019, LB79, § 18; Laws 2019, LB270, § 40; Laws 2020, LB944, § 67; Laws 2021, LB149, § 17.

Effective date August 28, 2021.

**60-629 Mail, defined.**

Mail shall mean to deposit in the United States mail properly addressed and with postage prepaid.

**Source:** Laws 1993, LB 370, § 125.

**60-630 Maintenance, defined.**

Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any highway, including surface, shoulders, roadsides, traffic control devices, structures, waterways, and drainage facilities, for the purpose of keeping it at or near or improving upon its original standard of usefulness and safety.

**Source:** Laws 1993, LB 370, § 126.

**60-631 Manual, defined.**

Manual shall mean the Manual on Uniform Traffic Control Devices adopted by the Department of Transportation pursuant to section 60-6,118.

**Source:** Laws 1993, LB 370, § 127; Laws 2017, LB339, § 182.

**60-632 Median, defined.**

Median shall mean that part of a divided highway, such as a physical barrier or clearly indicated dividing section or space, so constructed as to impede vehicular traffic across or within such barrier, section, or space or to divide such highway into two roadways for vehicular travel in opposite directions.

**Source:** Laws 1993, LB 370, § 128.

**60-633 Median crossover, defined.**

Median crossover shall mean a connection between roadways of a divided highway the use of which may permit a vehicle to reverse its direction by continuously moving forward.

**Source:** Laws 1993, LB 370, § 129.

**60-634 Median opening, defined.**

Median opening shall mean a gap in a median provided for crossing and turning traffic.

**Source:** Laws 1993, LB 370, § 130.

**60-635 Metal tire, defined.**

Metal tire shall mean every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

**Source:** Laws 1993, LB 370, § 131.

**60-636 Minibike, defined.**

Minibike shall mean a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. Minibike shall not include an electric personal assistive mobility device.

**Source:** Laws 1993, LB 370, § 132; Laws 2002, LB 1105, § 450.

**60-636.01 Minitruck, defined.**

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

**Source:** Laws 2010, LB650, § 37; Laws 2012, LB898, § 4.

**60-637 Moped, defined.**

Moped shall mean a device with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 1993, LB 370, § 133; Laws 2015, LB95, § 11.

**60-638 Motor vehicle, defined.**

Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except bicycles, mopeds, self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices.

**Source:** Laws 1993, LB 370, § 134; Laws 2002, LB 1105, § 451; Laws 2015, LB95, § 12.

**60-639 Motorcycle, defined.**

Motorcycle means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding tractors and electric personal assistive mobility devices. Motorcycle includes an auticycle.

**Source:** Laws 1993, LB 370, § 135; Laws 2002, LB 1105, § 452; Laws 2015, LB231, § 30; Laws 2018, LB909, § 96.

**60-640 Motor-driven cycle, defined.**

(1) Motor-driven cycle means every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower as measured at the drive shaft, mopeds, and every bicycle with motor attached except for a bicycle as described in subdivision (2) of section 60-611. Motor-driven cycle shall not include an electric personal assistive mobility device.

(2) For purposes of this section, motorcycle does not include an auticycle.

**Source:** Laws 1993, LB 370, § 136; Laws 2002, LB 1105, § 453; Laws 2015, LB95, § 13; Laws 2018, LB909, § 97.

**60-641 Nighttime, defined.**

Nighttime shall mean that period of time between sunset and sunrise.

**Source:** Laws 1993, LB 370, § 137.

**60-641.01 On-track equipment, defined.**

On-track equipment means any railroad locomotive or any other car, rolling stock, equipment, or other device operated upon stationary rails either alone or coupled to other railroad locomotives, cars, rolling stock, equipment, or devices.

**Source:** Laws 2019, LB81, § 3.



**60-642 Operator or driver, defined.**

Operator or driver shall mean any person who operates, drives, or is in actual physical control of a vehicle.

**Source:** Laws 1993, LB 370, § 138.

**60-643 Operator's license, defined.**

Operator's license shall have the meaning found in section 60-474.

**Source:** Laws 1993, LB 370, § 139.

**60-644 Owner, with respect to a vehicle, defined.**

Owner, with respect to a vehicle, shall mean a person, other than a person holding a security interest, having the property in or title to a vehicle, including a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excluding a lessee under a lease not intended as security.

**Source:** Laws 1993, LB 370, § 140.

**60-645 Park or parking, defined.**

Park or parking shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

**Source:** Laws 1993, LB 370, § 141.

**60-646 Peace officer, defined.**

Peace officer shall mean any town marshal, chief of police, local police officer, sheriff, or deputy sheriff, the Superintendent of Law Enforcement and Public Safety, or any officer of the Nebraska State Patrol and shall also include members of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder and Game and Parks Commission conservation officers while in areas under the control of the Game and Parks Commission. With respect to directing traffic only, peace officer shall also include any person authorized to direct or regulate traffic.

**Source:** Laws 1993, LB 370, § 142; Laws 1998, LB 922, § 405.

**60-647 Pedestrian, defined.**

Pedestrian shall mean any person afoot.

**Source:** Laws 1993, LB 370, § 143.

**60-648 Pneumatic tire, defined.**

Pneumatic tire shall mean any tire designed so that compressed air supports the load of the wheel.

**Source:** Laws 1993, LB 370, § 144.

**60-649 Private road or driveway, defined.**

Private road or driveway shall mean every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

**Source:** Laws 1993, LB 370, § 145.

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).

**60-649.01 Property-carrying unit, defined.**

Property-carrying unit shall mean any part of a commercial motor vehicle combination, except the truck-tractor, used to carry property and shall include trailers and semitrailers.

**Source:** Laws 2006, LB 853, § 16.

**60-650 Railroad, defined.**

Railroad shall mean a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

**Source:** Laws 1993, LB 370, § 146.

**60-651 Railroad sign or signal, defined.**

Railroad sign or signal shall mean any sign, signal, or device erected by authority of a public body or official or by a railroad intended to give notice of the presence of railroad tracks or the approach of a railroad train.

**Source:** Laws 1993, LB 370, § 147.

**60-652 Railroad train, defined.**

Railroad train shall mean a steam engine or an engine with an electric or other motor, with or without cars coupled thereto, operated upon rails.

**Source:** Laws 1993, LB 370, § 148.

**60-653 Registration, defined.**

Registration shall mean the registration certificate or certificates and license plates issued under the Motor Vehicle Registration Act.

**Source:** Laws 1993, LB 370, § 149; Laws 2005, LB 274, § 237.

**Cross References**

Motor Vehicle Registration Act, see section 60-301.

**60-654 Residential district, defined.**

Residential district shall mean the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

**Source:** Laws 1993, LB 370, § 150.

**60-654.01 Revocation of operator's license, defined.**

Revocation of operator's license shall have the meaning found in section 60-476.01.

**Source:** Laws 2001, LB 38, § 45.

**60-655 Right-of-way, defined.**

Right-of-way shall mean the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching

under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

**Source:** Laws 1993, LB 370, § 151.

The standard for determining whether a vehicle is “approaching” is whether or not the vehicle poses an immediate hazard; that is, whether the circumstances are such that there is a danger of collision if one vehicle does not grant precedence to the other. *Springer v. Bohling*, 259 Neb. 71, 607 N.W.2d 836 (2000).

The right-of-way does not include a right to encroach upon that half of the highway upon which cars coming from the opposite direction are entitled to travel. Generally, an unexcused vehicular encroachment on another’s lane of traffic, such as driving to the left of the middle of a roadway, prevents acquisition of a right-of-way and precludes the unlawful encroachment from becoming a favored position in movement of traffic. *Krul v. Harless*, 222 Neb. 313, 383 N.W.2d 744 (1986).

A police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. *Maple v. City of Omaha*, 222 Neb. 293, 384 N.W.2d 254 (1986).

Vehicle on the right has the favored position but does not have an absolute right to proceed regardless of the circumstances. *Crink v. Northern Nat. Gas. Co.*, 200 Neb. 460, 263 N.W.2d 857 (1978).

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. *Reese v. Mayer*, 198 Neb. 499, 253 N.W.2d 317 (1977).

### **60-656 Roadway, defined.**

Roadway shall mean that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, the term roadway shall refer to any such roadway separately but not to all such roadways collectively.

**Source:** Laws 1993, LB 370, § 152.

### **60-657 Safety zone, defined.**

Safety zone shall mean an area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as such area.

**Source:** Laws 1993, LB 370, § 153.

### **60-658 School bus, defined.**

School bus shall mean any motor vehicle which complies with the general design, equipment, and color requirements adopted and promulgated pursuant to subdivision (12) of section 79-318 and which is used to transport students to or from school or in connection with school activities but shall not include buses operated by common carriers in urban transportation of school students.

**Source:** Laws 1993, LB 370, § 154; Laws 1993, LB 575, § 5; Laws 2009, LB549, § 3; Laws 2013, LB222, § 20.

### **60-658.01 School crossing zone, defined.**

School crossing zone means the area of a roadway designated to the public by the Department of Transportation or any county, city, or village as a school crossing zone through the use of a sign or traffic control device as specified by the department or any county, city, or village in conformity with the manual but does not include any area of a freeway. A school crossing zone starts at the location of the first sign or traffic control device identifying the school crossing zone and continues until a sign or traffic control device indicates that the school crossing zone has ended.

**Source:** Laws 1997, LB 91, § 3; Laws 2017, LB339, § 183.

**60-659 Security interest, defined.**

Security interest shall mean an equitable title or property right in a vehicle reserved or created by agreement and which secures payment or performance of an obligation, including the interest of a lessor under a lease intended as security, and which is perfected when it is valid against third parties generally, subject only to specific statutory exceptions.

**Source:** Laws 1993, LB 370, § 155.

**60-660 Semitrailer, defined.**

Semitrailer shall mean any vehicle, with or without motive power, designed to carry persons or property and to be drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

**Source:** Laws 1993, LB 370, § 156.

**60-661 Shoulder, defined.**

Shoulder shall mean that part of the highway contiguous to the roadway and designed for the accommodation of stopped vehicles, for emergency use, and for lateral support of the base and surface courses of the roadway.

**Source:** Laws 1993, LB 370, § 157.

**60-662 Sidewalk, defined.**

Sidewalk shall mean that portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

**Source:** Laws 1993, LB 370, § 158.

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).

Sidewalk is portion of street between curb lines, or lateral lines of roadway and adjacent property lines, intended for use by pedestrians. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

**60-663 Snowmobile, defined.**

Snowmobile shall mean a self-propelled motor vehicle designed to travel on snow or ice or a natural terrain steered by wheels, skis, or runners and propelled by a belt-driven track with or without steel cleats.

**Source:** Laws 1993, LB 370, § 159.

**60-664 Solid tire, defined.**

Solid tire shall mean every tire of rubber or other resilient material which does not depend upon compressed air or metal for the support of the load of the wheel to which it attaches.

**Source:** Laws 1993, LB 370, § 160.

**60-665 Stand or standing, defined.**

Stand or standing shall mean the halting of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

**Source:** Laws 1993, LB 370, § 161.

**60-666 State, defined.**

State shall mean a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

**Source:** Laws 1993, LB 370, § 162.

**60-667 Stop or stopping, defined.**

(1) Stop, when required, shall mean a complete cessation of movement.

(2) Stop or stopping, when prohibited, shall mean any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control device.

**Source:** Laws 1993, LB 370, § 163.

**60-667.01 Super-two highway, defined.**

Super-two highway means a two-lane highway designed primarily for through traffic with passing lanes spaced intermittently and on alternating sides of the highway to provide predictable opportunities to pass slower moving vehicles.

**Source:** Laws 2018, LB1009, § 5.

**60-668 Through highway, defined.**

Through highway shall mean every highway or portion thereof on which vehicular traffic is given preferential right-of-way and at the entrances to which vehicular traffic from intersecting highways is required by law to yield such right-of-way to vehicles on such highway in obedience to a stop sign, yield sign, or other traffic control device, when such sign or device is erected as provided by law.

**Source:** Laws 1993, LB 370, § 164.

**60-669 Traffic, defined.**

Traffic shall mean pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any highway for purposes of travel.

**Source:** Laws 1993, LB 370, § 165.

**60-670 Traffic control device, defined.**

Traffic control device shall mean any sign, signal, marking, or other device not inconsistent with the Nebraska Rules of the Road placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

**Source:** Laws 1993, LB 370, § 166.

A "Road Closed" sign is a traffic control device. State v. Morrissey, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

**60-671 Traffic control signal, defined.**

Traffic control signal shall mean any signal, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

**Source:** Laws 1993, LB 370, § 167.

**60-672 Traffic infraction, defined.**

Traffic infraction shall mean the violation of any provision of the Nebraska Rules of the Road or of any law, ordinance, order, rule, or regulation regulating traffic which is not otherwise declared to be a misdemeanor or a felony.

**Source:** Laws 1993, LB 370, § 168; Laws 2000, LB 74, § 1.

**60-673 Trailer, defined.**

Trailer shall mean any vehicle, with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

**Source:** Laws 1993, LB 370, § 169.

**60-674 Truck, defined.**

Truck shall mean any motor vehicle designed, used, or maintained primarily for the transportation of property.

**Source:** Laws 1993, LB 370, § 170.

**60-675 Truck-tractor, defined.**

Truck-tractor shall mean any motor vehicle designed and primarily used for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

**Source:** Laws 1993, LB 370, § 171.

The classification of a vehicle as a truck-tractor under this section, is not changed by the addition of a box to the vehicle if the design and primary use of the vehicle is to draw other vehicles, and any load carried by the truck-tractor, other than a

part of the weight of the vehicle and the load so drawn, is merely incidental to its primary use. *State v. Speicher & Herick*, 203 Neb. 535, 279 N.W.2d 162 (1979).

**60-676 Vehicle, defined.**

Vehicle shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway except devices moved solely by human power or used exclusively upon stationary rails or tracks.

**Source:** Laws 1993, LB 370, § 172.

**(b) POWERS OF STATE AND LOCAL AUTHORITIES****60-677 Areas not part of state highway system or within an incorporated city or village; jurisdiction.**

The directors of state institutions, and the Game and Parks Commission and natural resources districts for areas under their control, shall have the powers of local authorities provided for in the Nebraska Rules of the Road with regard to roadways running through, within, or along the grounds of the institution or area which are not part of the state highway system and not within the limits of any incorporated city or village. The governing body of an incorporated city or village may delegate to the director of a state institution, or to the Game and Parks Commission or a natural resources district for an area under its control, responsibility for regulating traffic and placing and maintaining traffic control devices on roadways not part of the state highway system running through or within the limits of such institution or area and within the incorporated city or

village when such city or village does not exercise its right to regulate traffic on such roadway.

**Source:** Laws 1973, LB 45, § 12; Laws 1984, LB 861, § 16; R.S.1943, (1988), § 39-612; Laws 1993, LB 370, § 173.

**60-678 Regulations; violations; penalty.**

The State of Nebraska or any department, board, commission, or governmental subdivision thereof is hereby authorized, in its respective jurisdiction, to enact regulations permitting, prohibiting, and controlling the use of motor vehicles, minibikes, motorcycles, off-road recreation vehicles of any and all types, other powered vehicles, electric personal assistive mobility devices, and vehicles which are not self-propelled. Any person who operates any of such vehicles without the permission of the appropriate governmental entity or in a place, time, or manner which has been prohibited by such entity shall be guilty of a Class III misdemeanor.

Such governmental entity may further authorize the supervising official of any area under its ownership or control to permit, control, or prohibit operation of any motor vehicle, minibike, motorcycle, off-road recreational vehicle of any or all types, other powered vehicle, electric personal assistive mobility device, or vehicle which is not self-propelled on all or any portion of any area under its ownership or control at any time by posting or, in case of an emergency, by personal notice. Any person operating any such vehicle where prohibited, where not permitted, or in a manner so as to endanger the peace and safety of the public or as to harm or destroy the natural features or manmade features of any such area shall be guilty of a Class III misdemeanor.

**Source:** Laws 1971, LB 644, § 11; Laws 1977, LB 39, § 102; R.S.1943, (1988), § 60-2106; Laws 1993, LB 370, § 174; Laws 2002, LB 1105, § 454.

**60-679 Roadway; removal of dead or injured persons; peace officer.**

Peace officers may remove a dead body or an injured person from any roadway to the nearest available position off the roadway as may be necessary to keep the roadway open or safe for public travel or to any hospital, clinic, or medical doctor as may be necessary to preserve life.

**Source:** Laws 1973, LB 45, § 84; Laws 1978, LB 593, § 1; Laws 1979, LB 376, § 1; R.S.1943, (1988), § 39-684; Laws 1993, LB 370, § 175.

**Cross References**

Effect of section on alcohol-related offenses, see section 53-1,120.

**60-680 Regulation of highways by local authority; police powers.**

(1) Any local authority with respect to highways under its jurisdiction and within the reasonable exercise of the police power may:

- (a) Regulate or prohibit stopping, standing, or parking;
- (b) Regulate traffic by means of peace officers or traffic control devices;
- (c) Regulate or prohibit processions or assemblages on the highways;
- (d) Designate highways or roadways for use by traffic moving in one direction;
- (e) Establish speed limits for vehicles in public parks;

(f) Designate any highway as a through highway or designate any intersection as a stop or yield intersection;

(g) Restrict the use of highways as authorized in section 60-681;

(h) Regulate operation of bicycles and require registration and inspection of such, including requirement of a registration fee;

(i) Regulate operation of electric personal assistive mobility devices;

(j) Regulate or prohibit the turning of vehicles or specified types of vehicles;

(k) Alter or establish speed limits authorized in the Nebraska Rules of the Road;

(l) Designate no-passing zones;

(m) Prohibit or regulate use of controlled-access highways by any class or kind of traffic except those highways which are a part of the state highway system;

(n) Prohibit or regulate use of heavily traveled highways by any class or kind of traffic it finds to be incompatible with the normal and safe movement of traffic, except that such regulations shall not be effective on any highway which is part of the state highway system unless authorized by the Department of Transportation;

(o) Establish minimum speed limits as authorized in the rules;

(p) Designate hazardous railroad grade crossings as authorized in the rules;

(q) Designate and regulate traffic on play streets;

(r) Prohibit pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk as authorized in the rules;

(s) Restrict pedestrian crossings at unmarked crosswalks as authorized in the rules;

(t) Regulate persons propelling push carts;

(u) Regulate persons upon skates, coasters, sleds, and other toy vehicles;

(v) Notwithstanding any other provision of law, adopt and enforce an ordinance or resolution prohibiting the use of engine brakes on the National System of Interstate and Defense Highways that has a grade of less than five degrees within its jurisdiction. For purposes of this subdivision, engine brake means a device that converts a power producing engine into a power-absorbing air compressor, resulting in a net energy loss;

(w) Adopt and enforce such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; and

(x) Adopt other traffic regulations except as prohibited by state law or contrary to state law.

(2) No local authority, except an incorporated city with more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, shall erect or maintain any traffic control device at any location so as to require the traffic on any state highway or state-maintained freeway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the Department of Transportation.

(3) No ordinance or regulation enacted under subdivision (1)(d), (e), (f), (g), (j), (k), (l), (m), (n), (p), (q), or (s) of this section shall be effective until traffic control devices giving notice of such local traffic regulations are erected upon



or at the entrances to such affected highway or part thereof affected as may be most appropriate.

**Source:** Laws 1973, LB 45, § 97; R.S.1943, (1988), § 39-697; Laws 1993, LB 370, § 176; Laws 2000, LB 1361, § 2; Laws 2002, LB 491, § 2; Laws 2002, LB 1105, § 455; Laws 2017, LB113, § 48; Laws 2017, LB339, § 184.

The city is authorized to regulate or prohibit parking on its streets. There is no requirement that such prohibitions be made by ordinance. *Morrow v. City of Ogallala*, 213 Neb. 414, 329 N.W.2d 351 (1983).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under this

section and does not conflict with Nebraska's present right-of-way statutes, sections 39-609(1) and 39-614(1)(a). *Herman v. Lee*, 210 Neb. 563, 316 N.W.2d 56 (1982).

### **60-681 Highways, travel on; regulation by local authorities; when authorized; signs.**

Local authorities may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles, for a total period not to exceed one hundred eighty days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which such local authorities are responsible whenever any such highway by reason of deterioration, rain, snow, or other climatic condition will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weight thereof reduced. Such local authorities enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until such signs are erected and maintained.

Local authorities may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

**Source:** Laws 1931, c. 110, § 35, p. 316; C.S.Supp.,1941, § 39-1166; R.S.1943, § 39-770; R.S.1943, (1988), § 39-6,189; Laws 1993, LB 370, § 177; Laws 2016, LB977, § 21.

A city ordinance prohibiting vehicles weighing over five tons from using city streets except when such vehicles are delivering

goods to or from city residences or businesses is constitutional. *State v. Davison*, 213 Neb. 173, 328 N.W.2d 206 (1982).

## (c) PENALTY AND ENFORCEMENT PROVISIONS

### **60-682 Violations; traffic infraction.**

Unless otherwise declared in the Nebraska Rules of the Road with respect to particular offenses, a violation of any provision of the rules shall constitute a traffic infraction.

**Source:** Laws 1973, LB 45, § 102; R.S.1943, (1988), § 39-6,102; Laws 1993, LB 370, § 178.

#### **Cross References**

**General penalty**, see section 60-689.

**Operator's license**, assessment of points, revocation, see section 60-4,182 et seq.

Prosecution of a traffic infraction is a misdemeanor criminal proceeding authorizing a non-lawyer associate judge of the county court to preside in any such proceeding. *Miller v. Peterson*, 208 Neb. 658, 305 N.W.2d 364 (1981).

Prosecution for a traffic infraction is a criminal action. *State v. Knoles*, 199 Neb. 211, 256 N.W.2d 873 (1977).

Held, contributory negligence no defense where defendant's negligence was sole proximate cause of intersection accident. *Bonnes v. Olson*, 197 Neb. 309, 248 N.W.2d 756 (1976). officer probable cause to stop the vehicle. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

A motorist commits a traffic infraction by driving on a road marked with a road closed barricade and sign, thus giving an

### **60-682.01 Speed limit violations; fines.**

(1) Any person who operates a vehicle in violation of any maximum speed limit established for any highway or freeway is guilty of a traffic infraction and upon conviction shall be fined:

(a) Ten dollars for traveling one to five miles per hour over the authorized speed limit;

(b) Twenty-five dollars for traveling over five miles per hour but not over ten miles per hour over the authorized speed limit;

(c) Seventy-five dollars for traveling over ten miles per hour but not over fifteen miles per hour over the authorized speed limit;

(d) One hundred twenty-five dollars for traveling over fifteen miles per hour but not over twenty miles per hour over the authorized speed limit;

(e) Two hundred dollars for traveling over twenty miles per hour but not over thirty-five miles per hour over the authorized speed limit; and

(f) Three hundred dollars for traveling over thirty-five miles per hour over the authorized speed limit.

(2) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a maintenance, repair, or construction zone established pursuant to section 60-6,188. For purposes of this subsection, maintenance, repair, or construction zone means (a)(i) the portion of a highway identified by posted or moving signs as being under maintenance, repair, or construction or (ii) the portion of a highway identified by maintenance, repair, or construction zone speed limit signs displayed pursuant to section 60-6,188 and (b) within such portion of a highway where road construction workers are present. The maintenance, repair, or construction zone starts at the location of the first sign identifying the maintenance, repair, or construction zone and continues until a posted or moving sign indicates that the maintenance, repair, or construction zone has ended.

(3) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a school crossing zone as defined in section 60-658.01.

**Source:** Laws 1996, LB 901, § 11; Laws 1997, LB 91, § 4; Laws 2008, LB621, § 2; Laws 2009, LB111, § 1.

### **60-683 Peace officers; duty to enforce rules and laws; powers.**

All peace officers are hereby specifically directed and authorized and it shall be deemed and considered a part of the official duties of each of such officers to enforce the provisions of the Nebraska Rules of the Road, including the specific enforcement of maximum speed limits, and any other law regulating the operation of vehicles or the use of the highways. To perform the official duties imposed by this section, the Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol shall have the powers stated in section 81-2005. All other peace officers shall have the power:

- (1) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;
- (2) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of this state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law;
- (3) At all times to direct all traffic in conformity with law or, in the event of a fire or other emergency or in order to expedite traffic or insure safety, to direct traffic as conditions may require;
- (4) When in uniform, to require the driver of a vehicle to stop and exhibit his or her operator's license and registration certificate issued for the vehicle and submit to an inspection of such vehicle and the license plates and registration certificate for the vehicle and to require the driver of a motor vehicle to present the vehicle within five days for correction of any defects revealed by such motor vehicle inspection as may lead the inspecting officer to reasonably believe that such motor vehicle is being operated in violation of the statutes of Nebraska or the rules and regulations of the Director of Motor Vehicles;
- (5) To inspect any vehicle of a type required to be registered according to law in any public garage or repair shop or in any place where such a vehicle is held for sale or wrecking;
- (6) To serve warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways; and
- (7) To investigate traffic accidents for the purpose of carrying on a study of traffic accidents and enforcing motor vehicle and highway safety laws.

**Source:** Laws 1939, c. 78, § 1, p. 317; Laws 1941, c. 176, § 13, p. 693; C.S.Supp.,1941, § 39-11,119; R.S.1943, § 39-7,124; Laws 1989, LB 285, § 10; R.S.Supp.,1992, § 39-6,192; Laws 1993, LB 370, § 179; Laws 1996, LB 901, § 6; Laws 2005, LB 274, § 238.

#### Cross References

**Motor Vehicle Operator's License Act**, see section 60-462.

Investigative stop and search of auto by police held unconstitutional where officer had no reasonable suspicion the occupants were committing, had committed, or were about to commit a crime. *State v. Colgrove*, 198 Neb. 319, 253 N.W.2d 20 (1977).

In the absence of any proof of factual foundation, a mere radio dispatch to an officer to stop a vehicle does not constitute a "reasonably founded" suspicion authorizing detention. *State v. Benson*, 198 Neb. 14, 251 N.W.2d 659 (1977).

This section is constitutional and authorizes officers of the law to conduct routine stops of motor vehicles to check registration and operator's licenses even though there is no probable cause to believe a violation of law has occurred or is occurring. *State v. Shepardson*, 194 Neb. 673, 235 N.W.2d 218 (1975).

In enforcing licensing laws, officers are authorized to stop vehicles. *State v. Holmberg*, 194 Neb. 337, 231 N.W.2d 672 (1975).

The provisions of this section furnish no authority for an officer to issue an order to a person not under arrest to follow him where the offense involved was not a felony nor a violation of any law regulating the operation of vehicles or use of the highway. *State v. Embrey*, 188 Neb. 649, 198 N.W.2d 322 (1972).

Federal district court reversed for error in granting habeas corpus relief on Fourth Amendment grounds to state prisoner who had received full and fair hearing in state court with respect to alleged violations of his Fourth Amendment rights. *Holmberg v. Parratt*, 548 F.2d 745 (8th Cir. 1977).

Where officer's only reason for stopping automobile was for baseless check to determine if it carried front license plate, search pursuant to stop was unreasonable and court abstains from comment on constitutionality of section. *United States v. Bell*, 383 F.Supp. 1298 (D. Neb. 1974).

### **60-684 Person charged with traffic infraction; citation; refusal to sign; penalty.**

Whenever any person is charged with a traffic infraction, such person shall be issued a citation pursuant to the provisions of section 29-424. Any person

who refuses to sign the citation shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided by the provisions of section 29-426.

**Source:** Laws 1973, LB 45, § 105; Laws 1974, LB 829, § 9; R.S.1943, (1988), § 39-6,105; Laws 1993, LB 370, § 180.

**60-685 Misdemeanor or traffic infraction; lawful complaints.**

When a person has been charged with any act declared to be a misdemeanor or traffic infraction by the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Motor Vehicle Safety Responsibility Act, or the Nebraska Rules of the Road, and is issued a citation meeting the requirements prescribed by the Supreme Court, if such citation includes the information and is sworn to as required by the laws of this state, then such citation when filed with a court having jurisdiction shall be deemed a lawful complaint for the purpose of prosecution.

**Source:** Laws 1973, LB 45, § 107; Laws 1974, LB 829, § 10; R.S.1943, (1988), § 39-6,107; Laws 1993, LB 370, § 181; Laws 2005, LB 274, § 239.

**Cross References**

**Motor Vehicle Operator's License Act**, see section 60-462.

**Motor Vehicle Registration Act**, see section 60-301.

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-686 Posting of bond; forfeiture of bonds; exceptions.**

(1) When any person is required to post bond under any provision of the Nebraska Rules of the Road, such bond may consist of an unexpired guaranteed arrest bond certificate or a similar written instrument by its terms of current force and effect signed by such person and issued to him or her by an automobile club or a similar association or insurance company or a corporation, organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes, as provided by section 501(c)(4), (6), or (8) of the Internal Revenue Code, jointly and severally with a corporate surety duly authorized to transact fidelity or surety insurance business in this state or with an insurance company duly authorized to transact both automobile liability and fidelity and surety insurance business in this state to guarantee the appearance of such person at any hearing upon any arrest or apprehension or any violation or, in default of any such appearance, the prompt payment by or on behalf of such person of any fine or forfeiture imposed for such default not in excess of two hundred dollars.

(2) The provisions of subsection (1) of this section shall not apply to any person who is charged with a felony.

**Source:** Laws 1973, LB 45, § 108; Laws 1974, LB 829, § 11; Laws 1974, LB 920, § 1; R.S.1943, (1988), § 39-6,108; Laws 1993, LB 370, § 182; Laws 1995, LB 574, § 56.

**60-687 Arrest or apprehension.**

The procedures outlined in the Nebraska Rules of the Road shall apply only to apprehensions and arrests without a warrant for violations of the provisions

of the rules and shall not exclude other lawful means of effecting such arrest or apprehension.

**Source:** Laws 1973, LB 45, § 109; R.S.1943, (1988), § 39-6,109; Laws 1993, LB 370, § 183.

**60-688 Prosecution; disposition thereof.**

Prosecutions for violations declared by the Nebraska Rules of the Road to be misdemeanors or felonies shall be conducted and disposed of in the same manner as provided for such prosecutions under the laws of this state, and traffic infractions shall be treated in the same manner as misdemeanors, except as otherwise provided by law.

**Source:** Laws 1973, LB 45, § 111; R.S.1943, (1988), § 39-6,111; Laws 1993, LB 370, § 184; Laws 2000, LB 74, § 2.

**60-689 Prosecutions where penalty not specifically provided.**

Any person who is found guilty of a traffic infraction in violation of the Nebraska Rules of the Road for which a penalty has not been specifically provided shall be fined:

- (1) Not more than one hundred dollars for the first offense;
- (2) Not more than two hundred dollars for a second offense within a one-year period; and
- (3) Not more than three hundred dollars for a third and subsequent offense within a one-year period.

**Source:** Laws 1973, LB 45, § 112; Laws 1974, LB 829, § 12; Laws 1975, LB 547, § 1; Laws 1977, LB 40, § 207; R.S.1943, (1988), § 39-6,112; Laws 1993, LB 370, § 185.

**60-690 Aiding or abetting; guilty of such offense.**

Any person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared in the Nebraska Rules of the Road to be a misdemeanor or felony, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and any person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, or directs another to violate any provision of the rules shall be likewise guilty of such offense.

**Source:** Laws 1973, LB 45, § 115; R.S.1943, (1988), § 39-6,115; Laws 1993, LB 370, § 186.

**60-691 Moving traffic offense; conviction; court may require course of instruction.**

When a person has been convicted in any court in this state of any moving traffic offense, the court may, in addition to the penalty provided by law for such offense and as a part of the judgment of conviction or as a condition of probation, require such person, at his or her expense if any, to attend and satisfactorily complete a course of instruction at a driver improvement school, if such school exists, located and operating within the county of such person's residence or within the jurisdiction of such court. Such school shall be

designated by the court in its order and shall provide instruction in the recognition of hazardous traffic situations and prevention of traffic accidents.

**Source:** Laws 1969, c. 509, § 2, p. 2088; R.S.1943, (1988), § 60-427.01; Laws 1989, LB 285, § 7; R.S.Supp.,1992, § 39-6,114.01; Laws 1993, LB 370, § 187.

**60-692 Failure to satisfy judgment; effect.**

When any person fails within thirty working days to satisfy any judgment imposed for any traffic infraction, it shall be the duty of the clerk of the court in which such judgment is rendered within this state to transmit a copy of such judgment to the Department of Motor Vehicles as provided in section 60-4,100.

**Source:** Laws 1973, LB 45, § 110; Laws 1991, LB 420, § 6; R.S.Supp.,1992, § 39-6,110; Laws 1993, LB 370, § 188; Laws 2017, LB259, § 14.

**60-693 Evidence in civil actions; conviction not admissible.**

No evidence of the conviction of any person for any violation of any provision of the Nebraska Rules of the Road shall be admissible in any court in any civil action.

**Source:** Laws 1973, LB 45, § 118; R.S.1943, (1988), § 39-6,118; Laws 1993, LB 370, § 189.

Evidence of conviction for a traffic infraction, including a conviction for violation of a municipal ordinance, is not admissible in a civil suit for damages arising out of the same traffic infraction. *Stevenson v. Wright*, 273 Neb. 789, 733 N.W.2d 559 (2007).

**60-694 Conviction; credibility as a witness.**

The conviction of a person upon a charge of violating any provision of the Nebraska Rules of the Road or other traffic regulation which is less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

**Source:** Laws 1973, LB 45, § 119; R.S.1943, (1988), § 39-6,119; Laws 1993, LB 370, § 190.

**60-694.01 Operator's license; revocation; reinstatement fee.**

Whenever an operator's license is ordered revoked by the court or by administrative action of the Department of Motor Vehicles pursuant to the Nebraska Rules of the Road, the licensee shall pay a reinstatement fee to the Department of Motor Vehicles to reinstate his or her eligibility for a new license, in addition to complying with the other applicable provisions of the Nebraska Rules of the Road. The reinstatement fee shall be one hundred twenty-five dollars. The department shall remit the fees to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2001, LB 38, § 46.

(d) ACCIDENTS AND ACCIDENT REPORTING

**60-695 Peace officers; investigation of traffic accident; duty to report; Department of Transportation; powers; duties.**

Any peace officer who investigates any traffic accident in the performance of his or her official duties shall, in all instances of an accident resulting in injury or death to any person or in which estimated damage equals or exceeds one thousand five hundred dollars to the property of any one person, submit an original report of such investigation to the Department of Transportation within ten days after each such accident. The department shall have authority to collect accident information it deems necessary and shall prescribe and furnish appropriate forms for reporting.

**Source:** Laws 1973, LB 45, § 104; Laws 1985, LB 94, § 1; Laws 1988, LB 1030, § 41; R.S.1943, (1988), § 39-6,104; Laws 1993, LB 370, § 191; Laws 2003, LB 185, § 3; Laws 2017, LB339, § 185; Laws 2021, LB174, § 29.  
Effective date August 28, 2021.

**60-696 Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.**

(1) Except as provided in subsection (2) of this section, the driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to property, shall (a) immediately stop such vehicle at the scene of such accident and (b) give his or her name, address, telephone number, and operator's license number to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision.

(2) The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing the information required by subsection (1) of this section. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

(3)(a) A peace officer may remove or cause to be removed from a roadway, without the consent of the driver or owner, any vehicle, cargo, or other property which is obstructing the roadway creating or aggravating an emergency situation or otherwise endangering the public safety. Any vehicle, cargo, or other property obstructing a roadway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.

(b) This subsection does not apply if an accident results in or is believed to involve the release of hazardous materials, hazardous substances, or hazardous wastes, as those terms are defined in section 75-362.

(4) Any person violating subsection (1) or (2) of this section is guilty of a Class II misdemeanor. If such person has had one or more convictions under this section in the twelve years prior to the date of the current conviction under this section, such person is guilty of a Class I misdemeanor. As part of any sentence, suspended sentence, or judgment of conviction under this section, the court may order the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of up to one year from the date ordered by the court. If the court orders the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of up to one year from the date

ordered by the court, the court shall also order that the operator's license of such person be revoked for a like period.

**Source:** Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(2), p. 409; Laws 1949, c. 119, § 2, p. 316; Laws 1949, c. 120, § 2, p. 317; Laws 1959, c. 169, § 1, p. 617; R.R.S.1943, § 39-762.01; Laws 1978, LB 748, § 26; R.S.1943, (1988), § 39-6,104.02; Laws 1993, LB 370, § 192; Laws 1994, LB 929, § 1; Laws 2001, LB 254, § 1; Laws 2006, LB 925, § 7; Laws 2007, LB561, § 1; Laws 2010, LB914, § 1.

#### Cross References

**Operator's license**, assessment of points, see sections 60-497.01 and 60-4,182 et seq.

In a trial on charge of violating section 39-762 (transferred to section 60-697), request for instruction on leaving scene of property damage accident as lesser offense was properly refused. *State v. Jones*, 186 Neb. 303, 183 N.W.2d 235 (1971).

Pursuant to subsection (2) of this section, a driver is not criminally liable for leaving the scene of a property damage accident when he does not know that an accident has happened, an injury has been inflicted, or a death has occurred; lack of such knowledge constitutes a proper defense. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Pursuant to subsection (2) of this section, knowledge that an accident has occurred may be proved by circumstantial evidence in prosecution for leaving the scene of a damage accident; the fact finder may consider all of the facts and circum-

stances which are indicative of knowledge. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Pursuant to subsection (2) of this section, the question of lack of knowledge that an accident has happened, an injury has been inflicted, or a death has occurred in prosecution for leaving the scene of a property damage accident is one of fact, not law. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Subsections (1) and (2) of this section create separate offenses, not one single offense that can be committed in multiple ways. As such, where a defendant is charged with violation of one subsection, a conviction cannot be sustained absent proof of the statutory requirements of that specific subsection. *State v. Harper*, 19 Neb. App. 93, 800 N.W.2d 683 (2011).

### 60-697 Accident; driver's duty; penalty.

(1) The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (a) immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, (b) give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the occupants of any vehicle collided with, and (c) render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

(2) Any person violating any of the provisions of this section shall upon conviction thereof be punished as provided in section 60-698.

**Source:** Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(1), p. 409; Laws 1949, c. 119, § 1, p. 315; Laws 1949, c. 120, § 1, p. 317; R.R.S.1943, § 39-762; R.S.1943, (1988), § 39-6,104.01; Laws 1993, LB 370, § 193; Laws 2005, LB 274, § 240; Laws 2006, LB 925, § 8; Laws 2011, LB675, § 5.

#### Cross References

**Operator's license**, assessment of points, revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Under the facts in this case, a sentence of three years imprisonment was not excessive. *State v. Keil*, 192 Neb. 741, 224 N.W.2d 363 (1974).

Injury is a term in common and accepted usage and a penal statute which fails to define it is not unconstitutionally vague. *State v. Etchison*, 188 Neb. 134, 195 N.W.2d 498 (1972).

Under this section, leaving the scene of a property damage accident is not an includable offense. *State v. Jones*, 186 Neb. 303, 183 N.W.2d 235 (1971).

Circumstantial evidence was sufficient to prove knowledge of injury. *In re Interest of Moore*, 186 Neb. 67, 180 N.W.2d 917 (1970).



Knowledge that an accident has happened and that injury has been inflicted is an essential element of the offense under this section. *State v. Snell*, 177 Neb. 396, 128 N.W.2d 823 (1964).

Evidence was sufficient to sustain conviction of leaving the scene of an accident involving personal injury. *State v. Nichols*, 175 Neb. 761, 123 N.W.2d 860 (1963).

Effect of arrest of party for leaving scene of accident considered. *Bryant v. Greene*, 164 Neb. 15, 81 N.W.2d 580 (1957).

This and succeeding section are not invalid as being vague, duplicitous, and illegal. *Carr v. State*, 152 Neb. 248, 40 N.W.2d 677 (1950).

Where deceased voluntarily jumped from a moving vehicle and was injured in alighting without in any manner coming in contact with vehicle, this section does not apply. *Behrens v. State*, 140 Neb. 671, 1 N.W.2d 289 (1941).

The crime of manslaughter is a distinct offense from that of leaving the scene of an accident causing death under this section. *Wright v. State*, 139 Neb. 684, 298 N.W. 685 (1941).

### **60-698 Accident; failure to stop; penalty.**

(1) Any person convicted of violating section 60-697 relative to the duty to stop in the event of certain accidents shall be guilty of (a) a Class IIIA felony if the accident resulted in an injury to any person other than a serious bodily injury as defined in section 60-6,198 or death or (b) a Class III felony if the accident resulted in the death of any person or serious bodily injury as defined in section 60-6,198.

(2) The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than one year nor more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The order of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

**Source:** Laws 1931, c. 110, § 56, p. 324; C.S.Supp.,1941, § 39-1187; R.S.1943, § 39-763; Laws 1953, c. 214, § 2, p. 757; R.R.S.1943, § 39-763; Laws 1978, LB 748, § 27; R.S.1943, (1988), § 39-6,104.03; Laws 1993, LB 31, § 18; Laws 1993, LB 370, § 194; Laws 1997, LB 772, § 6; Laws 2006, LB 925, § 9; Laws 2011, LB675, § 6.

The grade of the offense is determined by the maximum punishment authorized. *Carr v. State*, 152 Neb. 248, 40 N.W.2d 677 (1950).

This section provides penalty for violation of statutory provisions requiring driver to stop in event of an accident. *Behrens v. State*, 140 Neb. 671, 1 N.W.2d 289 (1941).

### **60-699 Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; confidential information; violation; penalty.**

(1) The operator of any vehicle involved in an accident resulting in injuries or death to any person or damage to the property of any one person, including such operator, to an apparent extent that equals or exceeds one thousand five hundred dollars shall within ten days forward a report of such accident to the Department of Transportation. Such report shall not be required if the accident is investigated by a peace officer. If the operator is physically incapable of making the report, the owner of the motor vehicle involved in the accident shall, within ten days from the time he or she learns of the accident, report the matter in writing to the Department of Transportation. The Department of Transportation or Department of Motor Vehicles may require operators involved in accidents to file supplemental reports of accidents upon forms furnished by it whenever the original report is insufficient in the opinion of either department. The operator or the owner of the motor vehicle shall make such other and additional reports relating to the accident as either department requires. Such records shall be retained for the period of time specified by the State Records Administrator pursuant to the Records Management Act.

(2) The report of accident required by this section shall be in two parts. Part I shall be in such form as the Department of Transportation may prescribe and shall disclose full information concerning the accident. Part II shall be in such form as the Department of Motor Vehicles may prescribe and shall disclose sufficient information to disclose whether or not the financial responsibility requirements of the Motor Vehicle Safety Responsibility Act are met through the carrying of liability insurance.

(3) Upon receipt of a report of accident, the Department of Transportation shall determine the reportability and classification of the accident and enter all information into a computerized database. Upon completion, the Department of Transportation shall electronically send Part II of the report to the Department of Motor Vehicles for purposes of section 60-506.01.

(4) Such reports shall be without prejudice. Except as provided in section 84-712.05, a report regarding an accident made by a peace officer, made to or filed with a peace officer in the peace officer's office or department, or filed with or made by or to any other law enforcement agency of the state shall be open to public inspection, but an accident report filed by the operator or owner of a motor vehicle pursuant to this section shall not be open to public inspection. Date of birth and operator's license number information of an operator or owner included in any report required under this section shall be confidential and shall not be a public record under section 84-712.01. The fact that a report by an operator or owner has been so made shall be admissible in evidence solely to prove compliance with this section, but no such report or any part of or statement contained in the report shall be admissible in evidence for any other purpose in any trial, civil or criminal, arising out of such accidents nor shall the report be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages.

(5) The failure by any person to report an accident as provided in this section or to correctly give the information required in connection with the report shall be a Class V misdemeanor.

**Source:** Laws 1931, c. 110, § 29, p. 315; C.S.Supp.,1941, § 39-1160; R.S.1943, § 39-764; Laws 1951, c. 120, § 1, p. 531; Laws 1953, c. 215, § 1, p. 761; Laws 1961, c. 189, § 2, p. 580; Laws 1961, c. 319, § 1, p. 1019; Laws 1973, LB 417, § 1; R.S.Supp.,1973, § 39-764; Laws 1985, LB 94, § 2; R.S.1943, (1988), § 39-6,104.04; Laws 1993, LB 370, § 195; Laws 1993, LB 575, § 24; Laws 2003, LB 185, § 4; Laws 2017, LB263, § 73; Laws 2017, LB339, § 186; Laws 2021, LB174, § 30.  
Effective date August 28, 2021.

#### Cross References

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**Records Management Act**, see section 84-1220.

Report of accident was not admissible in evidence. *Styskal v. Brickey*, 158 Neb. 208, 62 N.W.2d 854 (1954).

#### **60-6,100 Accidents; reports required of garages and repair shops.**

The person in charge of any garage or repair shop to which is brought any vehicle which shows evidence of having been involved in a serious accident or struck by any bullet shall report to the nearest police station or sheriff's office

within twenty-four hours after such vehicle is received, giving the engine number, if applicable, the license number, and the name and address of the owner or operator of such vehicle.

**Source:** Laws 1931, c. 110, § 30, p. 315; C.S.Supp.,1941, § 39-1161; R.S.1943, § 39-765; R.S.1943, (1988), § 39-6,104.05; Laws 1993, LB 370, § 196; Laws 2005, LB 274, § 241.

**60-6,101 Accidents; coroner; report to Department of Transportation.**

Any coroner or other official performing the duties of coroner shall report in writing to the Department of Transportation the death of any person within his or her jurisdiction as the result of an accident involving a motor vehicle and the circumstances of such accident. Such report by the coroner shall be made within ten days after such death.

**Source:** Laws 1974, LB 66, § 1; R.S.1943, (1988), § 39-6,104.06; Laws 1993, LB 370, § 197; Laws 1993, LB 590, § 1; Laws 2017, LB339, § 187.

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was not inadmissible in wrongful death case. *Blackledge v. Martin K. Eby Constr. Co., Inc.* 542 F.2d 474 (8th Cir. 1976).

**60-6,102 Accident; death; driver; pedestrian sixteen years of age or older; coroner; examine body; amount of alcohol or drugs; report to Department of Transportation; public information.**

In the case of a driver who dies within four hours after being in a motor vehicle accident, including a motor vehicle accident in which one or more persons in addition to such driver is killed, and of a pedestrian sixteen years of age or older who dies within four hours after being struck by a motor vehicle, the coroner or other official performing the duties of coroner shall examine the body and cause such tests to be made as are necessary to determine the amount of alcohol or drugs in the body of such driver or pedestrian. Such information shall be included in each report submitted pursuant to sections 60-6,101 to 60-6,104 and shall be tabulated on a monthly basis by the Department of Transportation. Such information, including the identity of the deceased and any such amount of alcohol or drugs, shall be public information and may be released or disclosed as provided by the department.

**Source:** Laws 1974, LB 66, § 2; R.S.1943, (1988), § 39-6,104.07; Laws 1993, LB 370, § 198; Laws 1993, LB 590, § 2; Laws 2017, LB339, § 188; Laws 2019, LB190, § 3.

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was not inadmissible in wrongful death case. *Blackledge v. Martin K. Eby Constr. Co., Inc.* 542 F.2d 474 (8th Cir. 1976).

**60-6,103 Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information.**

Any surviving driver or pedestrian sixteen years of age or older who is involved in a motor vehicle accident in which a person is killed shall be requested, if he or she has not otherwise been directed by a peace officer to submit to a chemical test under section 60-6,197, to submit to a chemical test of blood, urine, or breath as the peace officer directs for the purpose of determining the amount of alcohol or drugs in his or her body fluid. The results of such

test shall be reported in writing to the Director-State Engineer who shall tabulate such results on a monthly basis. Such information, including the identity of such driver or pedestrian and any such amount of alcohol or drugs, shall be public information and may be released or disclosed as provided by the Department of Transportation. The provisions of sections 60-6,199, 60-6,200, and 60-6,202 shall, when applicable, apply to the tests provided for in this section.

**Source:** Laws 1974, LB 66, § 3; R.S.1943, (1988), § 39-6,104.08; Laws 1993, LB 370, § 199; Laws 1993, LB 590, § 3; Laws 2017, LB339, § 189; Laws 2019, LB190, § 4.

**60-6,104 Accidents; body fluid; samples; test; report.**

All samples and tests of body fluids under sections 60-6,101 to 60-6,103 shall be submitted to and performed by an individual possessing a valid permit issued by the Department of Health and Human Services for such purpose. Such tests shall be performed according to methods approved by the department. Such individual shall promptly perform such analysis and report the results thereof to the official submitting the sample.

**Source:** Laws 1974, LB 66, § 4; R.S.1943, (1988), § 39-6,104.09; Laws 1993, LB 370, § 200; Laws 1996, LB 1044, § 282; Laws 2007, LB296, § 232.

**60-6,105 Accidents; reports; statements; not available in trial arising out of accident involved; exception.**

No report and no statement contained in a report submitted pursuant to sections 60-6,101 to 60-6,104 or any part thereof shall be made available for any purpose in any trial arising out of the accident involved unless necessary solely to prove compliance with such sections.

**Source:** Laws 1974, LB 66, § 5; R.S.1943, (1988), § 39-6,104.10; Laws 1993, LB 370, § 201.

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was

not inadmissible in wrongful death case. *Blackledge v. Martin K. Eby Constr. Co., Inc.* 542 F.2d 474 (8th Cir. 1976).

**60-6,106 Accidents; reports; expenses; reimbursement to county by Department of Transportation.**

The Department of Transportation shall reimburse any county for expenses and costs incurred by the county pursuant to sections 60-6,101 to 60-6,105. The department shall provide the official in each county with the appropriate reporting form.

**Source:** Laws 1974, LB 66, § 6; R.S.1943, (1988), § 39-6,104.11; Laws 1993, LB 370, § 202; Laws 1993, LB 590, § 4; Laws 2017, LB339, § 190.

**60-6,107 Accidents; Department of Health and Human Services; Department of Transportation; rules and regulations.**

(1) Except as provided in subsection (2) of this section, the Department of Health and Human Services shall adopt necessary rules and regulations for the administration of the provisions of sections 60-6,101 to 60-6,106.

(2) The Department of Transportation may adopt and promulgate rules and regulations which provide for the release and disclosure of the results of tests conducted under sections 60-6,102 and 60-6,103.

**Source:** Laws 1974, LB 66, § 7; R.S.1943, (1988), § 39-6,104.12; Laws 1993, LB 370, § 203; Laws 1993, LB 590, § 5; Laws 1996, LB 1044, § 283; Laws 2007, LB296, § 233; Laws 2017, LB339, § 191; Laws 2019, LB190, § 5.

(e) APPLICABILITY OF TRAFFIC LAWS

**60-6,108 Required obedience to traffic laws; private property used for public road by consent of owner; provisions uniform throughout the state.**

(1) The provisions of the Nebraska Rules of the Road relating to operation of vehicles refer exclusively to operation of vehicles upon highways except where a different place is specifically referred to in a given section, but sections 60-6,196, 60-6,197, 60-6,197.04, and 60-6,212 to 60-6,218 shall apply upon highways and anywhere throughout the state except private property which is not open to public access.

(2) Nothing in the Nebraska Rules of the Road shall be construed to prevent the owner of real property used by the public for the purposes of vehicular travel, by permission of the owner and not as a matter of right, from prohibiting such use nor from requiring other, different, or additional conditions from those specified or otherwise regulating the use thereof by such owner.

(3) The Nebraska Rules of the Road shall be applicable and uniform throughout this state and in all political subdivisions and municipalities of this state, and no local authority shall enact or enforce any ordinance directly contrary to the Nebraska Rules of the Road unless expressly authorized by the Legislature.

**Source:** Laws 1973, LB 45, § 3; Laws 1992, LB 291, § 3; R.S.Supp.,1992, § 39-603; Laws 1993, LB 370, § 204; Laws 2004, LB 208, § 9.

The exception in this section is not a material element of the offense of driving under the influence, which the State must plead and prove in every case; instead, the exception creates an affirmative defense to the crime of driving under the influence. *State v. Grutell*, 305 Neb. 843, 943 N.W.2d 258 (2020).

The provisions of this section create a geographical exception to the driving under the influence statutes for private property

not open to public access. *State v. Grutell*, 305 Neb. 843, 943 N.W.2d 258 (2020).

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).

**60-6,109 Drivers to exercise due care with pedestrian; audible signal.**

Notwithstanding the other provisions of the Nebraska Rules of the Road, every driver of a vehicle shall exercise due care, which shall include, but not be limited to, leaving a safe distance of no less than three feet clearance, when applicable, to avoid colliding with any pedestrian upon any roadway and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or obviously confused or incapacitated person upon a roadway.

**Source:** Laws 1973, LB 45, § 44; R.S.1943, (1988), § 39-644; Laws 1993, LB 370, § 205; Laws 2012, LB1030, § 1.

In order for a driver to be held to the higher standard of care in this section, there must be evidence both that the person was actually confused or actually incapacitated and that such condition was objectively obvious to a reasonable driver. *State v. Welch*, 275 Neb. 517, 747 N.W.2d 613 (2008).

This section does not except the operation of section 39-643, which pertains to the duty of care required by a pedestrian who crosses the street between intersections. *Hines v. Pollock*, 229 Neb. 614, 428 N.W.2d 207 (1988) (pursuant to Laws 1993, LB

370, section 250, language from section 39-643 was placed in section 60-6,154).

This section merely sets out a higher standard of care in the situations described therein; intoxicated plaintiff was not an "obviously confused or incapacitated person" within the meaning of the statute. *Hines v. Pollock*, 229 Neb. 614, 428 N.W.2d 207 (1988).

Defendant failed to exercise due care when he failed to see a pedestrian who was in plain sight near a crosswalk and struck

her with the cement truck he was driving. This section is not unconstitutionally vague. Due care under the section means the absence of negligence. *State v. Mattan*, 207 Neb. 679, 300 N.W.2d 810 (1981).

A driver who is aware that a pedestrian standing on the curb is a 78-year-old with poor eyesight is compelled under this section to maintain a proper lookout and to exercise due care. *Dutton v. Travis*, 4 Neb. App. 875, 551 N.W.2d 759 (1996).

**60-6,110 Obedience to peace officers; violation; penalty.**

(1) Any person who knowingly fails or refuses to obey any lawful order of any peace officer who is controlling or directing traffic shall be guilty of a traffic infraction.

(2) Any person who knowingly fails to obey any lawful order of a peace officer shall be guilty of a Class III misdemeanor whenever such order is given in furtherance of the apprehension of a person who has violated the Nebraska Rules of the Road or of a person whom such officer reasonably believes has violated the rules.

**Source:** Laws 1973, LB 45, § 4; Laws 1977, LB 41, § 8; R.S.1943, (1988), § 39-604; Laws 1993, LB 370, § 206.

A person driving in response to a lawful order by a law enforcement officer is engaged in privileged conduct for which he cannot be punished. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

One who drives in response to the lawful order of a law enforcement officer engages in privileged conduct and may not be punished for so doing. *State v. Lichti*, 219 Neb. 894, 367 N.W.2d 138 (1985).

**60-6,111 Persons riding animals or driving animal-drawn vehicles; farm implements; duties.**

(1) Any person who rides an animal or drives an animal-drawn vehicle, a farm tractor, or an implement of husbandry upon a roadway shall be granted all of the rights and shall be subject to all of the duties made applicable to the driver of a vehicle by the Nebraska Rules of the Road except those provisions of the rules which by their very nature can have no application.

(2) Whenever the slowness of such animal, animal-drawn vehicle, farm tractor, or implement of husbandry is obstructing the normal flow of traffic, the rider or driver shall drive to the nearest available shoulder of the highway and allow traffic to pass.

**Source:** Laws 1973, LB 45, § 5; R.S.1943, (1988), § 39-605; Laws 1993, LB 370, § 207.

**60-6,112 Rules of the road; exceptions.**

Unless specifically made applicable, the Nebraska Rules of the Road, except those provisions relating to careless driving, reckless driving, and driving while under the influence of alcoholic liquor or drugs, shall not apply to:

(1) Persons, teams of draft animals, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway, but the rules shall apply to such persons and vehicles when traveling to or from such work; or

(2) Government employees and public utility employees to the extent that there would be a conflict between the rules and the performance of their official duties.

**Source:** Laws 1973, LB 45, § 6; Laws 1986, LB 896, § 1; Laws 1987, LB 133, § 1; R.S.1943, (1988), § 39-606; Laws 1993, LB 370, § 208.

This section does not absolve persons engaged in road work from obeying the fundamental premise that an operator of a vehicle is under a continuing duty to exercise reasonable care for the safety of others. *Gatzemeyer v. Neligh Township*, 233 Neb. 329, 445 N.W.2d 593 (1989).

Under the facts of this case, a wrongful death action was allowed against the driver and operator of a snowplow when the plow was in operation on the left side of the road in the face of oncoming traffic. *Beebe v. Sorensen Sand & Gravel Co.*, 209 Neb. 559, 308 N.W.2d 829 (1981).

### **60-6,113 Government vehicles; provisions applicable.**

Unless specifically exempted, the Nebraska Rules of the Road shall apply to all drivers of vehicles owned or operated on behalf of the United States or any state or political subdivision thereof.

**Source:** Laws 1973, LB 45, § 7; R.S.1943, (1988), § 39-607; Laws 1993, LB 370, § 209.

### **60-6,114 Authorized emergency vehicles; privileges; conditions.**

(1) Subject to the conditions stated in the Nebraska Rules of the Road, the driver of an authorized emergency vehicle, when responding to an emergency call, when pursuing an actual or suspected violator of the law, or when responding to but not when returning from a fire alarm, may:

(a) Stop, park, or stand, irrespective of the provisions of the rules, and disregard regulations governing direction of movement or turning in specified directions; and

(b) Except for wreckers towing disabled vehicles and highway maintenance vehicles and equipment:

(i) Proceed past a steady red indication, a flashing red indication, or a stop sign but only after slowing down as may be necessary for safe operation; and

(ii) Exceed the maximum speed limits so long as he or she does not endanger life, limb, or property.

(2) Except when operated as a police vehicle, the exemptions granted in subsection (1) of this section shall apply only when the driver of such vehicle, while in motion, sounds an audible signal by bell, siren, or exhaust whistle as may be reasonably necessary and when such vehicle is equipped with at least one lighted light displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.

(3) The exemptions granted in subsection (1) of this section shall not relieve the driver from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect such driver from the consequences of his or her reckless disregard for the safety of others.

(4) Authorized emergency vehicles operated by police and fire departments shall not be subject to the size and weight limitations of sections 60-6,288 to 60-6,290 and 60-6,294.

**Source:** Laws 1973, LB 45, § 8; R.S.1943, (1988), § 39-608; Laws 1993, LB 370, § 210; Laws 2005, LB 82, § 2.

The driver of an emergency vehicle has the right to proceed past a steady red light, but must exercise due care in doing so. *Gatewood v. City of Bellevue*, 232 Neb. 525, 441 N.W.2d 585 (1989).

Police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. Police

officer exercised due regard in operating an emergency vehicle. *Maple v. City of Omaha*, 222 Neb. 293, 384 N.W.2d 254 (1986).

The trial court did not err in refusing to direct a verdict in favor of the plaintiff, who was injured when he was struck by a police car responding to an emergency call. *Stephen v. City of Lincoln*, 209 Neb. 792, 311 N.W.2d 889 (1981).

### **60-6,115 Closed road; travel permitted; when.**

Notwithstanding the provisions of subsection (1) of section 60-6,119, when the Department of Transportation, any local authority, or its authorized repre-

sentative or permittee has closed, in whole or in part, by barricade or otherwise, during repair or construction, any portion of any highway, the restrictions upon the use of such highway shall not apply to persons living along such closed highway or to persons who would need to travel such highway during the normal course of their operations if no other route of travel is available to such person, but extreme care shall be exercised by such persons on such highway.

**Source:** Laws 1993, LB 370, § 211; Laws 2017, LB339, § 192.

Subsection (5) of this section applies to the operation of an automobile while it is on that part of the road which is closed and requires extreme caution so as to avoid the additional hazards that may be incident to the reason why the road has been closed. *Birchem v. Eggers*, 236 Neb. 775, 463 N.W.2d 824 (1990) (pursuant to Laws 1993, LB 370, section 211, language from subsection (5) of section 39-609 was placed in section 60-6,115).

Even if a motorist fell within the exception of the statute, an officer's stop of the vehicle for driving on a road which was clearly marked as being closed would be objectively reasonable

because the officer would have probable cause to believe that a traffic violation has occurred. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

The exception of this section did not apply to a motorist traveling a road closed only due to weather and road conditions and where neither the motorist nor his passengers lived along the closed road, had reason to travel the road in the normal course of operations, or lacked another route of travel to their destination. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

**60-6,116 Vehicle owner; driver violations.**

The owner of any vehicle or any person employing or otherwise directing the driver of any vehicle shall not require or knowingly permit the operation of such vehicle in any manner contrary to the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 116; R.S.1943, (1988), § 39-6,116; Laws 1993, LB 370, § 212.

**60-6,117 Parental duties; child less than sixteen.**

The parent or guardian of any child who is less than sixteen years old shall not knowingly permit any such child to violate any provision of the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 87; R.S.1943, (1988), § 39-687; Laws 1993, LB 370, § 213.

(f) TRAFFIC CONTROL DEVICES

**60-6,118 Manual on Uniform Traffic Control Devices; adoption by Department of Transportation.**

Consistent with the provisions of the Nebraska Rules of the Road, the Department of Transportation may adopt and promulgate rules and regulations adopting and implementing a manual providing a uniform system of traffic control devices on all highways within this state which, together with any supplements adopted by the department, shall be known as the Manual on Uniform Traffic Control Devices.

**Source:** Laws 1973, LB 45, § 98; Laws 1984, LB 677, § 1; R.S.1943, (1988), § 39-698; Laws 1993, LB 370, § 214; Laws 2017, LB339, § 193.

**60-6,119 Obedience to traffic control devices; exceptions.**

(1) The driver of any vehicle shall obey the instructions of any traffic control device applicable thereto placed in accordance with the Nebraska Rules of the Road, unless otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle in the rules.



(2) No provision of the rules for which traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by a reasonably observant person. Whenever any provision of the rules does not state that traffic control devices are required, such provision shall be effective even though no devices are erected or in place.

(3) Whenever traffic control devices are placed in position approximately conforming to the requirements of the rules, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary is established by competent evidence.

(4) Any traffic control device placed pursuant to the rules and purporting to conform with the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of the rules unless the contrary is established by competent evidence.

**Source:** Laws 1973, LB 45, § 9; R.S.1943, (1988), § 39-609; Laws 1993, LB 370, § 215.

Subsection (5) of this section applies to the operation of an automobile while it is on that part of the road which is closed and requires extreme caution so as to avoid the additional hazards that may be incident to the reason why the road has been closed. *Birchem v. Eggers*, 236 Neb. 775, 463 N.W.2d 824 (1990) (pursuant to Laws 1993, LB 370, section 211, language from subsection (5) of section 39-609 was placed in section 60-6,115).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under section

39-697(1)(c) (transferred to section 60-680) and does not conflict with Nebraska's present right-of-way statutes, this section and section 39-614(1)(a) (transferred to section 60-6,123). *Herman v. Lee*, 210 Neb. 563, 316 N.W.2d 56 (1982).

This section does not apply to a highway partially barricaded but not closed to traffic. *Central Constr. Co. v. Republican City School Dist. No. 1*, 206 Neb. 615, 294 N.W.2d 347 (1980).

### **60-6,120 Placing and maintaining traffic control devices; jurisdiction.**

(1) The Department of Transportation shall place and maintain, or provide for such placing and maintaining, such traffic control devices, conforming to the manual, upon all state highways as it deems necessary to indicate and to carry out the Nebraska Rules of the Road or to regulate, warn, or guide traffic.

(2)(a) In incorporated cities and villages with less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the department shall have exclusive jurisdiction regarding the erection and maintenance of traffic control devices on the state highway system but shall not place traffic control devices on the state highway system within incorporated cities of more than twenty-five hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census without consultation with the proper city officials.

(b) In incorporated cities of forty thousand or more inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, except on state-maintained freeways of the state highway system where the department retains exclusive jurisdiction, the city shall have jurisdiction regarding erection and maintenance of traffic control devices on the state highway system after consultation with the department, except that there shall be joint jurisdiction with the department for such traffic control devices for which the department accepts responsibility for the erection and maintenance.

(3) No local authority shall place or maintain any traffic control device upon any highway under the jurisdiction of the department, except by permission of

the department, or on any state-maintained freeway of the state highway system.

(4) The placing of traffic control devices by the department shall not be a departmental rule, regulation, or order subject to the statutory procedures for such rules, regulations, or orders but shall be considered as establishing precepts extending the provisions of the Nebraska Rules of the Road as necessary to regulate, warn, or guide traffic. Violation of such traffic control devices shall be punishable as provided in the rules.

**Source:** Laws 1973, LB 45, § 10; R.S.1943, (1988), § 39-610; Laws 1993, LB 370, § 216; Laws 2017, LB113, § 49; Laws 2017, LB339, § 194.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because

the decision of whether to place pavement markings at the crossing was discretionary. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

**60-6,121 Placing and maintaining traffic control devices; local authorities.**

Local authorities in their respective jurisdictions shall place and maintain such traffic control devices upon highways under their jurisdictions as they deem necessary to indicate and to carry out the provisions of the Nebraska Rules of the Road or to regulate, warn, or guide traffic. All such traffic control devices erected pursuant to the rules shall conform with the manual.

**Source:** Laws 1973, LB 45, § 11; R.S.1943, (1988), § 39-611; Laws 1993, LB 370, § 217.

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

the discretionary immunity exception of section 13-910 does not apply. *Tadros v. City of Omaha*, 269 Neb. 528, 694 N.W.2d 180 (2005).

Once a city elects to install a pedestrian crosswalk signal, it is required to conform to the Manual on Uniform Traffic Control Devices in determining the pedestrian clearance interval, and

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).

**60-6,122 Traffic control devices; when illegal to sell or lease.**

It shall be unlawful for any person to sell, lease, or offer for sale or lease any traffic control devices which are not in compliance with the manual.

**Source:** Laws 1973, LB 45, § 13; R.S.1943, (1988), § 39-613; Laws 1993, LB 370, § 218.

**60-6,123 Traffic control signals; meaning; turns on red signal; when; signal not in service; effect.**

Whenever traffic is controlled by traffic control signals exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend, number, or symbol, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1)(a) Vehicular traffic facing a circular green indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such indication is exhibited;

(b) Vehicular traffic facing a green arrow indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time, and such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

(c) Unless otherwise directed by a pedestrian-control signal, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk;

(2)(a) Vehicular traffic facing a steady yellow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection, and upon display of a steady yellow indication, vehicular traffic shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety, a vehicle may be driven cautiously through the intersection; and

(b) Pedestrians facing a steady yellow indication, unless otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway;

(3)(a) Vehicular traffic facing a steady red indication alone shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection. The traffic shall remain standing until an indication to proceed is shown except as provided in subdivisions (3)(b) and (3)(c) of this section;

(b) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication may cautiously enter the intersection to make a right turn after stopping as required by subdivision (3)(a) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;

(c) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication at the intersection of two one-way streets may cautiously enter the intersection to make a left turn after stopping as required by subdivision (3)(a) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

(d) Unless otherwise directed by a pedestrian-control signal, pedestrians facing a steady red indication alone shall not enter the roadway;

(4) If a traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal; and

(5)(a) If a traffic control signal at an intersection is not operating because of a power failure or other cause and no peace officer, flagperson, or other traffic

control device is providing direction for traffic at the intersection, the intersection shall be treated as a multi-way stop; and

(b) If a traffic control signal is not in service and the signal heads are turned away from traffic or covered with opaque material, subdivision (a) of this subdivision shall not apply.

**Source:** Laws 1973, LB 45, § 14; Laws 1980, LB 821, § 1; Laws 1987, LB 135, § 1; R.S.1943, (1988), § 39-614; Laws 1993, LB 370, § 219; Laws 2010, LB805, § 10.

In the case of a collision involving two vehicles approaching an intersection from opposite directions with a green light for both vehicles, a determination of which vehicle was "lawfully" in the intersection first, thereby possessing a superior right-of-way for purposes of this section, was a question of fact for the jury. *Nguyen v. Rezac*, 256 Neb. 458, 590 N.W.2d 375 (1999).

Speeding up to cross an intersection on a yellow light in violation of subdivision (2)(a) of this section provides sufficient cause for a police officer observing the violation to make an investigatory stop. *State v. LaMere*, 230 Neb. 629, 432 N.W.2d 822 (1988).

A pedestrian crossing at a regular crosswalk with the right-of-way has a right, until he has notice or knowledge to the contrary, to assume that others will respect his right-of-way.

Even though a statute grants the right-of-way to a pedestrian crossing a street in the crosswalk, it does not excuse contributory negligence on his part. *Holly v. Mitchell*, 213 Neb. 203, 328 N.W.2d 750 (1982).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under section 39-697(1)(c) (transferred to section 60-680) and does not conflict with Nebraska's present right-of-way statutes, section 39-609(1) (transferred to section 60-6,119) and this section. *Herman v. Lee*, 210 Neb. 563, 316 N.W.2d 56 (1982).

Directed verdict was improperly granted to a motorist where a factual issue existed as to whether the motorist or a bicyclist was in the favored position to proceed into the intersection. *Luellman v. Ambroz*, 2 Neb. App. 855, 516 N.W.2d 627 (1993).

**60-6,124 Pedestrian-control signals.**

Whenever pedestrian-control signals exhibiting the words WALK or DONT WALK or exhibiting the symbol of a walking person or an upraised hand are in place, such signals shall indicate as follows:

(1) Pedestrians facing a steady WALK indication or a symbol of a walking person may proceed across the roadway in the direction of such signal and shall be given the right-of-way by the drivers of all vehicles; and

(2) No pedestrian shall start to cross the roadway in the direction of a DONT WALK indication or a symbol of an upraised hand, but any pedestrian who has partially completed his or her crossing on the WALK or walking person indication shall immediately proceed to a sidewalk or safety island while the flashing DONT WALK or flashing upraised hand indication is showing.

**Source:** Laws 1973, LB 45, § 15; Laws 1987, LB 135, § 2; R.S.1943, (1988), § 39-615; Laws 1993, LB 370, § 220.

A pedestrian crossing at a regular crosswalk with the right-of-way has a right, until he has notice or knowledge to the contrary, to assume that others will respect his right-of-way. Even though a statute grants the right-of-way to a pedestrian

crossing a street in the crosswalk, it does not excuse contributory negligence on his part. *Holly v. Mitchell*, 213 Neb. 203, 328 N.W.2d 750 (1982).

**60-6,125 Flashing signals; exception.**

Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it shall require obedience by vehicular traffic as follows:

(1) When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign; and

(2) When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such light only with caution.

This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in the Nebraska Rules of the Road pertaining to such railroad grade crossings.

**Source:** Laws 1973, LB 45, § 16; R.S.1943, (1988), § 39-616; Laws 1993, LB 370, § 221.

Generally, the failure to see an approaching vehicle is not negligence as a matter of law unless the vehicle is undisputably in a favored position. *Treffer v. Seevers*, 195 Neb. 114, 237 N.W.2d 114 (1975).

#### **60-6,126 Lane direction control signals; signs.**

When lane direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a specified or appropriate green indication is shown but shall not enter or travel in any lane over which a specified or appropriate red indication is shown. When such signals are in use, signs adequate to advise motorists of the meaning of such signals shall be erected.

**Source:** Laws 1973, LB 45, § 17; R.S.1943, (1988), § 39-617; Laws 1993, LB 370, § 222.

#### **60-6,126.01 Road name signs; authorized.**

Local authorities may place and maintain road name signs on the same sign posts as signs under the jurisdiction of the Department of Transportation when highway visibility would not be impaired. Local authorities may also place and maintain road name signs in the right-of-way of any highway under the jurisdiction of the Department of Transportation when highway visibility would not be impaired.

**Source:** Laws 2006, LB 853, § 17; Laws 2017, LB339, § 195.

#### **60-6,127 Display of unauthorized signs, signals, or markings; public nuisance; removal.**

(1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, light, marking, or device which purports to be, is an imitation of, or resembles a lawful traffic control device or railroad sign or signal, which uses the words stop or danger prominently displayed, which implies the need or requirement of stopping or the existence of danger, which attempts to direct the movement of traffic, which otherwise copies or resembles any lawful traffic control device, or which hides from view or interferes with the effectiveness of a traffic control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal which bears commercial advertising except as authorized by sections 39-204 to 39-206.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs unless prohibited by another statute.

(4) Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance, and the authority having jurisdiction over any highway where

such prohibited sign, signal, or marking is found may remove it or cause it to be removed without notice.

**Source:** Laws 1973, LB 45, § 18; R.S.1943, (1988), § 39-618; Laws 1993, LB 370, § 223.

**60-6,128 Advertising devices adjacent to highway; when prohibited; public nuisance; removal.**

No advertising devices shall be erected or operated upon any private property adjacent to or near any highway which:

- (1) Have a light, the beam of which is concentrated on the highway or adversely affects the vision of operators of vehicles upon the roadway by the use of flashing red, amber, yellow, or green lights which have the very obvious appearance of devices generally used as official traffic control devices; or
- (2) Have photo-flash type lights, flood lights, spotlights, or other lighted signs which use the words Stop or Danger prominently displayed, which imply the need or requirement of stopping or the existence of danger, or which otherwise copy or resemble official traffic control devices.

Nothing in this section shall be construed to apply to official traffic control devices erected by the public agencies having jurisdiction.

Any advertising device erected, maintained, or operated in violation of this section is hereby declared to be a public nuisance. It shall be the duty of the public agency having jurisdiction to notify the owner of all lights in violation of the provisions of this section, and the public agency may remove such lights if the owner fails or refuses to remove them within a reasonable time after he or she is notified of such violation.

**Source:** Laws 1963, c. 224, § 3, p. 704; R.R.S.1943, § 39-714.05; R.S. 1943, (1988), § 39-618.01; Laws 1993, LB 370, § 224.

**60-6,129 Interference with official traffic control devices or railroad signs or signals; prohibited; liability in civil action.**

(1) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any traffic control device, any railroad sign or signal, or any part of such a device, sign, or signal.

(2) Any person who moves, alters, damages, or destroys warning devices placed upon roads which the Department of Transportation or any local authority or its representative has closed in whole or in part for the protection of the public or for the protection of the highway from damage during construction, improvement, or maintenance operation and thereby causes injury or death to any person or damage to any property, equipment, or material thereon shall be liable, subject to sections 25-21,185 and 25-21,185.07 to 25-21,185.12, for the full or allocated amount of such death, injury, or damage, and such amount may be recovered by the injured or damaged party or his or her legal representative in a civil action brought in any court of competent jurisdiction.

**Source:** Laws 1973, LB 45, § 19; Laws 1992, LB 262, § 10; R.S.Supp.,1992, § 39-619; Laws 1993, LB 370, § 225; Laws 2017, LB339, § 196.

**60-6,130 Signs, markers, devices, or notices; prohibited acts; penalty.**

(1) Any person who willfully or maliciously shoots upon the public highway and injures, defaces, damages, or destroys any signs, monuments, road markers, traffic control devices, traffic surveillance devices, or other public notices lawfully placed upon such highways shall be guilty of a Class III misdemeanor.

(2) No person shall willfully or maliciously injure, deface, alter, or knock down any sign, traffic control device, or traffic surveillance device.

(3) It shall be unlawful for any person, other than a duly authorized representative of the Department of Transportation, a county, or a municipality, to remove any sign, traffic control device, or traffic surveillance device placed along a highway for traffic control, warning, or informational purposes by official action of the department, county, or municipality. It shall be unlawful for any person to possess a sign or device which has been removed in violation of this subsection.

(4) Any person violating subsection (2) or (3) of this section shall be guilty of a Class II misdemeanor and shall be assessed liquidated damages in the amount of the value of the sign, traffic control device, or traffic surveillance device and the cost of replacing it.

**Source:** G.S.1873, c. 58, § 100, p. 743; R.S.1913, § 3040; Laws 1915, c. 60, § 1, p. 154; C.S.1922, § 2791; C.S.1929, § 39-1026; R.S.1943, § 39-714; Laws 1971, LB 331, § 1; R.S.Supp.,1972, § 39-714; Laws 1977, LB 41, § 9; Laws 1989, LB 283, § 1; R.S.Supp.,1992, § 39-619.01; Laws 1993, LB 370, § 226; Laws 2017, LB339, § 197.

**(g) USE OF ROADWAY AND PASSING****60-6,131 Driving on right half of roadway required; exceptions.**

(1) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway, except that any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) Upon a roadway restricted to one-way traffic.

(2) Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(3) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the

roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under subdivision (1)(b) of this section. This subsection shall not be construed to prohibit the crossing of the centerline in making a left turn into or from an alley, private road, or driveway unless such movement is otherwise prohibited by signs.

**Source:** Laws 1973, LB 45, § 20; R.S.1943, (1988), § 39-620; Laws 1993, LB 370, § 227.

Violation of this statute is only evidence of negligence and does not constitute negligence per se. *Bourke v. Watts*, 223 Neb. 511, 391 N.W.2d 552 (1986).

Violation of a statute is evidence of negligence, but not negligence per se. *Clark Bilt, Inc. v. Wells Dairy Co.*, 200 Neb. 20, 261 N.W.2d 772 (1978).

**60-6,132 Vehicles proceeding in opposite direction; passing.**

Passing vehicles proceeding in opposite directions shall each keep to the right side of the roadway, passing left to left, and upon roadways having width for not more than one lane of traffic in each direction, each driver shall give to the other, as nearly as possible, at least one-half of the main-traveled portion of the roadway.

**Source:** Laws 1973, LB 45, § 21; R.S.1943, (1988), § 39-621; Laws 1993, LB 370, § 228.

**60-6,133 Overtaking and passing rules; vehicles proceeding in same direction.**

Except when overtaking and passing on the right is permitted, the following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

- (1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall first give a visible signal of his or her intention and shall pass to the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle;
- (2) The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle; and
- (3) The driver of a vehicle overtaking a bicycle or electric personal assistive mobility device proceeding in the same direction shall exercise due care, which shall include, but not be limited to, leaving a safe distance of no less than three feet clearance, when applicable, when passing a bicycle or electric personal assistive mobility device and shall maintain such clearance until safely past the overtaken bicycle or electric personal assistive mobility device.

**Source:** Laws 1973, LB 45, § 22; R.S.1943, (1988), § 39-622; Laws 1993, LB 370, § 229; Laws 1993, LB 575, § 6; Laws 2000, LB 1361, § 3; Laws 2012, LB1030, § 2.

**60-6,134 Overtaking and passing upon the right; when permitted.**

- (1) The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:
  - (a) When the vehicle to be overtaken is making or about to make a left turn;
  - (b) Upon a two-way street or highway with an unobstructed roadway, not occupied by parked vehicles, of sufficient width for two or more lanes of



moving vehicles going in the same direction when the passing vehicle is traveling in one of such lanes; or

(c) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, when the roadway is free from obstructions and of sufficient width for two or more lanes of moving vehicles.

(2) In no event shall the driver of a vehicle overtake and pass another vehicle upon the right unless such movement may be made safely upon the roadway.

**Source:** Laws 1973, LB 45, § 23; Laws 1983, LB 406, § 1; R.S.1943, (1988), § 39-623; Laws 1993, LB 370, § 230.

**60-6,134.01 School crossing zone; overtaking and passing prohibited; penalty.**

It is unlawful for a person operating a motor vehicle to overtake and pass another vehicle in a school crossing zone in which the roadway has only one lane of traffic in each direction. Any person convicted of overtaking and passing another vehicle in a school crossing zone is guilty of a traffic infraction and shall be fined not more than two hundred dollars for the first offense and at least two hundred dollars but not more than four hundred dollars for a second or subsequent offense.

**Source:** Laws 1997, LB 91, § 5.

**60-6,135 Limitations on overtaking and passing on the left; precautions required; return to right side of highway.**

(1) No vehicle shall overtake another vehicle proceeding in the same direction on an undivided two-way roadway when such overtaking requires the overtaking vehicle to be driven on the left side of the center of the roadway unless the left side is clearly visible for a distance sufficient to accomplish such overtaking and is free from oncoming traffic for a distance sufficient to:

(a) Permit the overtaking vehicle to return to an authorized lane of traffic before coming within two hundred feet of any approaching vehicle; and

(b) Permit the overtaking vehicle to be safely clear of the overtaken vehicle while returning to the authorized lane of travel as provided in the Nebraska Rules of the Road.

(2) After completing such overtaking, the overtaking vehicle shall return to the authorized lane of travel as soon as practicable.

(3) Any such overtaking shall be subject to the rules.

(4) The provisions of this section shall not permit the crossing of the centerline of an undivided highway providing for two or more lanes of traffic in each direction for the purpose of overtaking and passing another vehicle.

**Source:** Laws 1973, LB 45, § 24; R.S.1943, (1988), § 39-624; Laws 1993, LB 370, § 231.

**60-6,136 Limitations on overtaking, passing, or driving to the left of the center of roadway; when prohibited.**

(1) No driver shall overtake and pass another vehicle or drive to the left of the center of the roadway whenever:

(a) He or she approaches the crest of a grade or is upon a curve in the highway where the driver's view is obstructed within such distance as to create

a hazard in the event another vehicle might approach from the opposite direction;

(b) He or she approaches within one hundred feet of or traverses any intersection or railroad grade crossing;

(c) The view is obstructed when he or she approaches within one hundred feet of any bridge, viaduct, or tunnel; or

(d) The section of roadway is designated as a no-passing zone under section 60-6,137.

(2) The limitations imposed by subsection (1) of this section shall not apply (a) upon a one-way roadway, (b) under the conditions described in subdivision (1)(b) of section 60-6,131, or (c) to the driver of a vehicle turning left into or from an alley, private road, or driveway unless otherwise prohibited by signs.

**Source:** Laws 1973, LB 45, § 25; R.S.1943, (1988), § 39-625; Laws 1993, LB 370, § 232.

A driver is negligent as a matter of law if he makes a left turn between intersections without signaling. Ben Gay, Inc., v. Giesbrecht, 720 F.2d 1003 (8th Cir. 1983).

#### **60-6,137 No-passing zones; exception.**

(1) The Department of Transportation and local authorities may determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left of the center of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones. When such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey such indications.

(2) Where signs or markings are in place to define a no-passing zone, no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section shall not apply (a) under the conditions described in subdivision (1)(b) of section 60-6,131 or (b) to the driver of a vehicle turning left into or from an alley, private road, or driveway unless otherwise prohibited by signs.

**Source:** Laws 1973, LB 45, § 26; R.S.1943, (1988), § 39-626; Laws 1993, LB 370, § 233; Laws 2017, LB339, § 198.

#### **60-6,138 One-way roadways and roundabouts; jurisdiction; exception for emergency vehicles.**

(1) The Department of Transportation and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all times or at such times as shall be indicated by traffic control devices.

(2) Except for emergency vehicles, no vehicle shall be operated, backed, pushed, or otherwise caused to move in a direction which is opposite to the direction designated by competent authority on any deceleration lane, acceleration lane, access ramp, shoulder, or roadway.

(3) A vehicle which passes around a roundabout shall be driven only to the right of the central island while on the circulatory roadway in such roundabout.

**Source:** Laws 1973, LB 45, § 27; R.S.1943, (1988), § 39-627; Laws 1993, LB 370, § 234; Laws 2017, LB339, § 199; Laws 2021, LB174, § 31.  
Effective date August 28, 2021.

**60-6,139 Driving on roadways laned for traffic; rules; traffic control devices.**

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this section, shall apply:

(1) A vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except (a) when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, (b) in preparation for making a left turn, or (c) when such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by traffic control devices;

(3) Traffic control devices may be erected by the Department of Transportation or local authorities to direct specified traffic to use a designated lane or to designate those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device; and

(4) Traffic control devices may be installed by the department or local authorities to prohibit the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

**Source:** Laws 1973, LB 45, § 28; R.S.1943, (1988), § 39-628; Laws 1993, LB 370, § 235; Laws 2017, LB339, § 200.

By including the language "as nearly as practicable," subdivision (1) of this section expressly requires that surrounding circumstances be considered. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

The language "as nearly as practicable" conveys that subdivision (1) of this section does not require absolute adherence to a

feasibility requirement, but, rather, something less rigorous. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

The mere touching or crossing of a lane divider line, without more, does not constitute a traffic violation under this section. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

**60-6,140 Following vehicles; restrictions.**

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, and such driver shall have due regard for the speed of such vehicles and the traffic upon and the condition of the roadway.

(2) The driver of any motor vehicle drawing a trailer, semitrailer, or another vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle shall, subject to varying road conditions, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger and shall not follow another motor vehicle drawing a trailer, semitrailer, or another vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

(3) The driver of a motor vehicle upon any roadway outside of a business or residential district in a caravan or motorcade, whether or not towing other vehicles, shall operate such vehicle so as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This subsection shall not apply to funeral processions.

(4) The driver of any motor vehicle when traveling upon a roadway outside of a business or residential district shall not follow any highway maintenance vehicle more closely than one hundred feet if:

(a) Such highway maintenance vehicle is engaged in plowing snow, removing deposited material from the surface of the road, or spreading salt, sand, or other material upon the surface of the road or is in motion on or near the traveled portion of a road performing other highway maintenance duties; and

(b) Such highway maintenance vehicle is displaying a flashing amber or white light.

This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

(5) The driver of any motor vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle displaying flashing amber or white lights shall not follow such vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

**Source:** Laws 1973, LB 45, § 29; Laws 1986, LB 437, § 1; R.S.1943, (1988), § 39-629; Laws 1993, LB 370, § 236.

A state trooper had probable cause to stop a vehicle, in which the defendant was a passenger, for following too closely, despite the trooper's statement that he had a hunch the passengers could be involved in transporting contraband. The trooper testified that he observed the vehicle following one car length

behind a semi-truck while both vehicles were traveling over 70 miles per hour in the rain; thus, the trooper's alleged ulterior motivation for the stop was irrelevant. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

**60-6,141 Driving on divided highways; driving on median prohibited; exceptions.**

(1) Whenever any highway has been divided into two or more roadways by a median, a driver shall drive only upon the right-hand roadway unless directed or permitted to use another roadway by traffic control devices or competent authority.

(2) No driver shall drive any vehicle over, across, or within any median except through a median opening or median crossover as established by competent authority. Medians on freeways shall not be crossed or entered upon at any point unless specifically directed by competent authority.

(3) No driver except drivers of authorized emergency vehicles and drivers of wreckers or other vehicles assisting a stranded vehicle shall use any emergency entrance or median crossover on a freeway intended only for emergency vehicles, but no such excepted driver shall drive in such manner as to create a hazard to any other vehicle.

**Source:** Laws 1973, LB 45, § 30; Laws 1981, LB 64, § 1; R.S.1943, (1988), § 39-630; Laws 1993, LB 370, § 237.

**60-6,142 Driving on highway shoulders prohibited; exceptions.**

No person shall drive on the shoulders of highways, except that:

(1) Vehicles may be driven on the shoulders of highways (a) by federal mail carriers while delivering the United States mail or (b) to safely remove a vehicle from a roadway;

(2) Implements of husbandry may be driven on the shoulders of highways; and

(3) Bicycles and electric personal assistive mobility devices may be operated on paved shoulders of highways included in the state highway system other than Nebraska segments of the National System of Interstate and Defense Highways.

**Source:** Laws 1973, LB 45, § 31; Laws 1988, LB 969, § 1; R.S.1943, (1988), § 39-631; Laws 1993, LB 370, § 238; Laws 1993, LB 575, § 7; Laws 2002, LB 1105, § 456.

Any crossing of the fog line onto the shoulder constitutes driving on the shoulder and is a violation of this section. State v. Magallanes, 284 Neb. 871, 824 N.W.2d 696 (2012).

**60-6,143 Controlled-access highway; entrances; exits.**

No person shall drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by competent authority.

**Source:** Laws 1973, LB 45, § 32; R.S.1943, (1988), § 39-632; Laws 1993, LB 370, § 239.

**60-6,144 Restrictions on use of controlled-access highway.**

Use of a freeway and entry thereon by the following shall be prohibited at all times except by permit from the Department of Transportation or from the local authority in the case of freeways not under the jurisdiction of the department:

- (1) Pedestrians except in areas specifically designated for that purpose;
- (2) Hitchhikers or walkers;
- (3) Vehicles not self-propelled;
- (4) Bicycles, motor-driven cycles, motor scooters not having motors of more than ten horsepower, and electric personal assistive mobility devices;
- (5) Animals led, driven on the hoof, ridden, or drawing a vehicle;
- (6) Funeral processions;
- (7) Parades or demonstrations;
- (8) Vehicles, except emergency vehicles, unable to maintain minimum speed as provided in the Nebraska Rules of the Road;
- (9) Construction equipment;
- (10) Implements of husbandry, whether self-propelled or towed, except as provided in section 60-6,383;
- (11) Vehicles with improperly secured attachments or loads;
- (12) Vehicles in tow, when the connection consists of a chain, rope, or cable, except disabled vehicles which shall be removed from such freeway at the nearest interchange;
- (13) Vehicles with deflated pneumatic, metal, or solid tires or continuous metal treads except maintenance vehicles;

(14) Any person standing on or near a roadway for the purpose of soliciting or selling to an occupant of any vehicle; or

(15) Overdimensional vehicles.

**Source:** Laws 1973, LB 45, § 33; R.S.1943, (1988), § 39-633; Laws 1993, LB 370, § 240; Laws 1993, LB 575, § 8; Laws 2002, LB 1105, § 457; Laws 2006, LB 853, § 18; Laws 2016, LB977, § 23; Laws 2017, LB339, § 201.

#### **60-6,145 Official signs on controlled-access highway.**

The Department of Transportation and local authorities shall erect and maintain at appropriate locations official signs on freeways under their respective jurisdictions apprising motorists of the restrictions placed upon the use of such highways by the Nebraska Rules of the Road. When the department or local authority posts such signs, it need not follow the usual rules and procedure of posting signs on or near freeways nor shall the department be required to conform with the formalities of public hearings. When such signs are erected, no person shall violate the restrictions stated on such signs.

**Source:** Laws 1973, LB 45, § 34; R.S.1943, (1988), § 39-634; Laws 1993, LB 370, § 241; Laws 2017, LB339, § 202.

#### (h) RIGHT-OF-WAY

#### **60-6,146 Vehicles approaching or entering intersection at same time; right-of-way; entering a highway or roadway.**

(1) When two vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(2) Notwithstanding the provisions of subsection (1) of this section, a vehicle entering a highway from an acceleration lane, a ramp, or any other approach road shall yield the right-of-way to a vehicle on the main roadway entering such merging area at the same time, regardless of whether the approach road is to the left or the right of the main roadway, unless posted signs indicate otherwise.

(3) The driver of a vehicle about to enter or cross a paved roadway from an unpaved roadway and who is not subject to control by a traffic control device shall yield the right-of-way to all vehicles approaching on such paved roadway.

(4) The right-of-way rules set forth in subsections (1) and (3) of this section are modified at through highways and otherwise as stated in the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 35; R.S.1943, (1988), § 39-635; Laws 1993, LB 370, § 242.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use ordinary care as they proceed through the intersection. *Salazar v. Nemeck*, 253 Neb. 298, 570 N.W.2d 366 (1997).

Under subsection (1) of this section, when a collision occurs in an ordinary city or country intersection, unless there is evidence that one of the vehicles was traveling at a very much greater rate of speed than the other, it is self-evident that the vehicles were reaching the intersection at approximately the same time. *Workman v. Stehlik*, 238 Neb. 666, 471 N.W.2d 760 (1991).

When two vehicles approach an intersection at the same time, the vehicle on the right has the immediate use of the intersection. *Muirhead v. Gunst*, 204 Neb. 1, 281 N.W.2d 207 (1979).

Vehicle on the right has the favored position but does not have an absolute right to proceed regardless of the circumstances. *Crink v. Northern Nat. Gas Co.*, 200 Neb. 460, 263 N.W.2d 857 (1978).

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. *Reese v. Mayer*, 198 Neb. 499, 253 N.W.2d 317 (1977).

**60-6,147 Vehicle turning left; yield right-of-way.**

The driver of a vehicle who intends to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or approaching so close as to constitute an immediate hazard.

**Source:** Laws 1973, LB 45, § 36; R.S.1943, (1988), § 39-636; Laws 1993, LB 370, § 243.

In an intersection collision involving a vehicle turning left with a green light and a vehicle subsequently entering the intersection with a green light from the opposite direction, the determination of which vehicle was required to yield to the other pursuant to this section was a question of fact for the jury. *Nguyen v. Rezac*, 256 Neb. 458, 590 N.W.2d 375 (1999).

A driver is charged with exercising due diligence to determine whether it is safe to turn left on a roadway. *Mitchell v. Kesting*, 221 Neb. 506, 378 N.W.2d 188 (1985).

The degree of care required by this section was increased by the fact that the sun restricted the visibility of the left-turning driver. *Ambrosio v. Price*, 495 F.Supp. 381 (D. Neb. 1979).

**60-6,148 Preferential right-of-way; stop and yield signs.**

(1) Competent authority may provide for preferential right-of-way at an intersection and indicate such by stop signs or yield signs erected by such authorities.

(2) Except when directed to proceed by a peace officer or traffic control signal, every driver of a vehicle approaching an intersection where a stop is indicated by a stop sign shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, such driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on such highway as to constitute an immediate hazard if such driver moved across or into such intersection.

(3) The driver of a vehicle approaching a yield sign shall slow to a speed reasonable under the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, such driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard if such driver moved across or into such intersection.

**Source:** Laws 1973, LB 45, § 37; R.S.1943, (1988), § 39-637; Laws 1993, LB 370, § 244.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use

ordinary care as they proceed through the intersection. *Salazar v. Nemeec*, 253 Neb. 298, 570 N.W.2d 366 (1997).

**60-6,149 Vehicle entering roadway from private road or driveway; yield right-of-way.**

The driver of a vehicle emerging from an alley, driveway, private road, or building shall stop such vehicle immediately before driving onto a sidewalk and shall yield the right-of-way to any pedestrian approaching on any sidewalk. Before entering the highway, the driver shall yield the right-of-way to all vehicles approaching on such highway.

The driver of a vehicle entering an alley, building, private road, or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk.

**Source:** Laws 1973, LB 45, § 38; R.S.1943, (1988), § 39-638; Laws 1993, LB 370, § 245.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. *McFarland v. King*, 216 Neb. 92, 341 N.W.2d 920 (1983).

Jury damage award to defendant on counterclaim, in auto negligence case, reversed where defendant held negligent as matter of law. *Rief v. Foy*, 198 Neb. 572, 254 N.W.2d 86 (1977).

An automobile driver is required to see only those approaching vehicles which relative to speed and distance are within the radius which denotes the limit of danger. *Laux v. Robinson*, 195 Neb. 601, 239 N.W.2d 786 (1976).

A bicyclist "emerging from an alley, driveway, private road, or building" shall stop before entering a highway or road. *Luellman v. Ambroz*, 2 Neb. App. 855, 516 N.W.2d 627 (1994).

**60-6,150 Moving a stopped, standing, or parked vehicle; yield right-of-way.**

No person shall move a vehicle which is stopped, standing, or parked without yielding the right-of-way to all other vehicles and pedestrians affected by such movement and in no event until such movement can be made with reasonable safety.

**Source:** Laws 1973, LB 45, § 39; R.S.1943, (1988), § 39-639; Laws 1993, LB 370, § 246.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use

ordinary care as they proceed through the intersection. *Salazar v. Nemeck*, 253 Neb. 298, 570 N.W.2d 366 (1997).

**60-6,151 Operation of vehicles upon the approach of emergency vehicles.**

(1) Upon the immediate approach of an authorized emergency vehicle which makes use of proper audible or visual signals:

(a) The driver of any other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the roadway or to either edge or curb of a one-way roadway, clear of any intersection, and shall stop and remain in such position until such emergency vehicle passes unless otherwise directed by any peace officer; and

(b) Any pedestrian using such roadway shall yield the right-of-way until such emergency vehicle passes unless otherwise directed by any peace officer.

(2) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

**Source:** Laws 1973, LB 45, § 40; R.S.1943, (1988), § 39-640; Laws 1993, LB 370, § 247.

A police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. *Maple v. City of Omaha*, 222 Neb. 293, 384 N.W.2d 254 (1986).

Police department standard operating procedures are merely evidence of "proper audible or visual signals." Police officer

exercised due regard in operating an emergency vehicle. *Maple v. City of Omaha*, 222 Neb. 293, 384 N.W.2d 254 (1986).

The trial court did not err in refusing to direct a verdict in favor of the plaintiff, who was injured when he was struck by a police car responding to an emergency call. *Stephen v. City of Lincoln*, 209 Neb. 792, 311 N.W.2d 889 (1981).

(i) PEDESTRIANS

**60-6,152 Pedestrian obedience to traffic control devices and regulations.**

(1) A pedestrian shall obey the instructions of any traffic control device specifically applicable to pedestrians unless otherwise directed by a peace officer.



(2) Pedestrians shall be subject to traffic and pedestrian-control signals as provided in the Nebraska Rules of the Road.

(3) At all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions set forth in the rules.

**Source:** Laws 1973, LB 45, § 41; R.S.1943, (1988), § 39-641; Laws 1993, LB 370, § 248.

**Cross References**

**Duties of driver approaching blind or deaf or hard of hearing person,** see section 20-128.

**Failure to observe blind person,** see section 28-1314.

**Failure to yield to pedestrian,** assessment of points against operator's license, see section 60-4,182 et seq.

**Unlawful use of white cane or guide dog,** see section 28-1313.

**60-6,152.01 Person operating wheelchair; rights and duties applicable to pedestrian.**

Any disabled person operating a manual or motorized wheelchair on a sidewalk or across a roadway or shoulder in a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances.

**Source:** Laws 2015, LB641, § 2.

**60-6,153 Pedestrians' right-of-way in crosswalk; traffic control devices.**

(1) Except at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, when traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within a crosswalk who is in the lane in which the driver is proceeding or is in the lane immediately adjacent thereto by bringing his or her vehicle to a complete stop.

(2) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(4) At or adjacent to the intersection of two highways at which a path designated for bicycles and pedestrians is controlled by a traffic control signal, a pedestrian who lawfully enters a highway where the path crosses the highway shall have the right-of-way within the crossing with respect to vehicles and bicycles.

(5) The Department of Transportation and local authorities in their respective jurisdictions may, after an engineering and traffic investigation, designate unmarked crosswalk locations where pedestrian crossing is prohibited or where pedestrians shall yield the right-of-way to vehicles. Such restrictions shall be effective only when traffic control devices indicating such restrictions are in place.

**Source:** Laws 1973, LB 45, § 42; Laws 1979, LB 395, § 1; R.S.1943, (1988), § 39-642; Laws 1993, LB 370, § 249; Laws 2016, LB716, § 1; Laws 2017, LB339, § 203.

**Cross References**

**Failure to yield to pedestrian,** assessment of points against operator's license, see section 60-4,182 et seq.

The driver of a vehicle shall yield the right-of-way to a pedestrian within a crosswalk. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

Pursuant to subsection (2) of this section, a pedestrian who stepped from the curb into traffic failed to prove causation to

withstand a directed verdict because the evidence showed that the driver could not have avoided hitting the pedestrian even if the driver had seen the pedestrian step from the curb. *Fidler v. Koster*, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

**60-6,154 Crossing at other than crosswalks; yield right-of-way.**

(1) Every pedestrian who crosses a roadway at any point other than within a marked crosswalk, or within an unmarked crosswalk at an intersection, shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian who crosses a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(4) Where a path designated for bicycles and pedestrians crosses a highway, a pedestrian who is in the crossing in accordance with the traffic control device shall have the right-of-way within the crossing with respect to vehicles and bicycles.

(5) No pedestrian shall cross a roadway intersection diagonally unless authorized by traffic control devices, and when authorized to cross diagonally, pedestrians shall cross only in accordance with the traffic control devices pertaining to such crossing movements.

(6) Local authorities and the Department of Transportation, by erecting appropriate official traffic control devices, may, within their respective jurisdictions, prohibit pedestrians from crossing any roadway in a business district or any designated highway except in a crosswalk.

**Source:** Laws 1973, LB 45, § 43; R.S.1943, (1988), § 39-643; Laws 1993, LB 370, § 250; Laws 2016, LB716, § 2; Laws 2017, LB339, § 204.

Violation of this provision is not determinative of the degree of a pedestrian's negligence, if any. *Hennings v. Schufeldt*, 222 Neb. 416, 384 N.W.2d 274 (1986).

Pedestrians may cross intersection diagonally when authorized by official traffic-control devices, but only in accordance with devices pertaining to such movements. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

Pursuant to subsection (1) of this section, a pedestrian who stepped from the curb into traffic failed to prove causation to withstand a directed verdict because the evidence showed that the driver could not have avoided hitting the pedestrian even if the driver had seen the pedestrian step from the curb. *Fidler v. Koster*, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

**60-6,155 Pedestrians to use right half of crosswalk.**

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

**Source:** Laws 1973, LB 45, § 45; R.S.1943, (1988), § 39-645; Laws 1993, LB 370, § 251.

**60-6,156 Pedestrians on highways and roadways; sidewalks and shoulders.**

(1) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway or shoulder.

(2) Where a sidewalk is not available and a shoulder is available, any pedestrian walking along and upon a highway shall walk only on the shoulder as far as practicable from the edge of the roadway.

(3) Where neither a sidewalk nor a shoulder is available, any pedestrian who walks along and upon a highway shall walk as near as practicable to the edge of the roadway and, if on a two-way roadway, shall walk only on the left side of such roadway.

**Source:** Laws 1973, LB 45, § 46; R.S.1943, (1988), § 39-646; Laws 1993, LB 370, § 252.

Violation of a statute is not negligence per se, but is merely evidence of negligence. *Vanek v. Prohaska*, 233 Neb. 848, 448 N.W.2d 573 (1989).

is not negligence per se but merely evidence of negligence. *Hurlbut v. Landgren*, 200 Neb. 413, 264 N.W.2d 174 (1978).

Where plaintiff is discovered walking on the traveled portion of the highway at the time of an accident, violation of a statute

**60-6,157 Pedestrians soliciting rides or business; prohibited acts; ordinance authorizing solicitation of contributions.**

(1) Except as otherwise provided in subsection (3) of this section, no person shall stand in a roadway for the purpose of soliciting a ride, employment, contributions, or business from the occupant of any vehicle.

(2) No person shall stand on or in proximity to a highway for the purposes of soliciting the watching or guarding of any vehicle while parked or about to be parked on a highway.

(3)(a) Any municipality may, by ordinance, allow pedestrians over the age of eighteen to enter one or more roadways, except roadways that are part of the state highway system, at specified times and locations and approach vehicles when stopped by traffic control devices or traffic control signals for the purpose of soliciting contributions which are to be devoted to charitable or community betterment purposes.

(b) Any ordinance enacted pursuant to this subsection shall be a general ordinance which shall not exclude or give preference to any individual or the members of any organization, association, or group. Any ordinance whose terms or provisions do not strictly comply with this subsection is void.

**Source:** Laws 1973, LB 45, § 47; R.S.1943, (1988), § 39-647; Laws 1993, LB 370, § 253; Laws 2009, LB278, § 1.

**60-6,158 Driving through safety zone; prohibited.**

The driver of a vehicle shall not at any time drive through or within a safety zone.

**Source:** Laws 1973, LB 45, § 48; R.S.1943, (1988), § 39-648; Laws 1993, LB 370, § 254.

(j) TURNING AND SIGNALS

**60-6,159 Required position and method of turning; right-hand and left-hand turns; traffic control devices.**

(1) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and, after entering the intersection, the left turn shall be made so as to leave the intersection, as nearly as practicable, in the extreme left-hand lane lawfully available to traffic moving

in such direction upon the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) The Department of Transportation and local authorities in their respective jurisdictions may cause traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such devices are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

**Source:** Laws 1973, LB 45, § 50; R.S.1943, (1988), § 39-650; Laws 1993, LB 370, § 255; Laws 2017, LB339, § 205.

**60-6,160 Turning to proceed in opposite direction; limitation.**

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet, or at any place where such turns are prohibited by signs. No vehicle, except authorized emergency vehicles, shall be turned at any place on a freeway so as to proceed in the opposite direction.

**Source:** Laws 1973, LB 45, § 51; R.S.1943, (1988), § 39-651; Laws 1993, LB 370, § 256.

Violation of this section is a criminal offense within the meaning of the double jeopardy provisions of Article I, section 12, Nebraska Constitution. *State v. Knoles*, 199 Neb. 211, 256 N.W.2d 873 (1977).

**60-6,161 Turning or moving right or left upon a roadway; required signals; signals prohibited.**

(1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided in sections 60-6,162 and 60-6,163.

(2) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in such sections to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(4) The brake and turn signal lights required on vehicles by section 60-6,226 shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or do pass signal to operators of other vehicles approaching from the rear, or flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

**Source:** Laws 1973, LB 45, § 52; R.S.1943, (1988), § 39-652; Laws 1993, LB 370, § 257.

The giving of the statutorily required turn signal is not enough; one must exercise reasonable care under all the circumstances. *Huntwork v. Voss*, 247 Neb. 184, 525 N.W.2d 632 (1995).

A driver is charged with exercising due diligence to determine whether it is safe to turn left on a roadway. *Mitchell v. Kesting*, 221 Neb. 506, 378 N.W.2d 188 (1985).

**60-6,162 Signals given by hand and arm or signal lights; signal lights required; exceptions.**

(1) Any stop signal or turnsignal required by the Nebraska Rules of the Road shall be given either by means of the hand and arm or by signal lights except as otherwise provided in this section.

(2) With respect to any motor vehicle having four or more wheels manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, or any trailer, in use on a highway, any required signal shall be given by the appropriate signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle or trailer exceeds twenty-four inches. Such measurement shall apply to any single vehicle or trailer and to any combination of vehicles or trailers. This subsection shall not apply during daylight hours to fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations.

(3) Under any condition when a hand and arm signal would not be visible both to the front and rear of the vehicle of such signaling driver for one hundred feet, the required signals shall be given by such a light or device as required by this section.

**Source:** Laws 1973, LB 45, § 53; Laws 1987, LB 216, § 1; R.S.1943, (1988), § 39-653; Laws 1993, LB 370, § 258; Laws 1995, LB 59, § 1; Laws 2003, LB 238, § 5; Laws 2005, LB 274, § 242.

**60-6,163 Hand and arm signals; how given.**

(1) Except as provided in subsection (2) of this section, all hand and arm signals required by the Nebraska Rules of the Road shall be given from the left side of the vehicle with the left arm in the following manner and such signals shall indicate as follows:

- (a) Left turn—hand and arm extended to the left horizontally;
- (b) Right turn—hand and forearm extended upward; and
- (c) Stop or decrease speed—hand and arm extended downward.

(2) Any person operating a bicycle may signal a right turn by fully extending the right arm and pointing.

**Source:** Laws 1973, LB 45, § 54; R.S.1943, (1988), § 39-654; Laws 1993, LB 370, § 259; Laws 1993, LB 575, § 9.

(k) STOPPING, STANDING, PARKING, AND BACKING UP

**60-6,164 Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations; duties of driver.**

(1) No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed twenty-four hours.

(2) No person shall stop, park, or leave standing any vehicle on a freeway except in areas designated or unless so directed by a peace officer, except that

when a vehicle is disabled or inoperable or the driver of the vehicle is ill or incapacitated, such vehicle shall be permitted to park, stop, or stand on the shoulder facing in the direction of travel with all wheels and projecting parts of such vehicle completely clear of the traveled lanes, but in no event shall such parking, standing, or stopping upon the shoulder of a freeway exceed twelve hours.

(3) No person, except law enforcement, fire department, emergency management, public or private ambulance, or authorized Department of Transportation or local authority personnel, shall loiter or stand or park any vehicle upon any bridge, highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

(4) Whenever a vehicle is disabled or inoperable in a roadway or for any reason obstructs the regular flow of traffic for reasons other than an accident, the driver shall move or cause the vehicle to be moved as soon as practical so as to not obstruct the regular flow of traffic.

(5) This section does not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position until such time as it can be removed pursuant to subsection (4) of this section.

**Source:** Laws 1973, LB 45, § 70; R.S.1943, (1988), § 39-670; Laws 1993, LB 370, § 260; Laws 1996, LB 43, § 11; Laws 2007, LB561, § 2; Laws 2017, LB339, § 206.

A prima facie violation of this section was shown by presenting evidence that the defendant stopped and left a truck standing on the highway, shifting the burden to the defendant to create a jury question by presenting evidence the truck was not stopped and left standing or it was not practicable to move the truck. *Tapp v. Blackmore Ranch, Inc.*, 254 Neb. 40, 575 N.W.2d 341 (1998).

Evidence of violation of this section is evidence of negligence or contributory negligence. *Horst v. Johnson*, 237 Neb. 155, 465 N.W.2d 461 (1991).

One who claims that his vehicle was unavoidably stalled and disabled on the highway and that, therefore, the exception of subsection (4) of this section applies had the burden of proving that he comes within that exception. *Porter v. Black*, 205 Neb. 699, 289 N.W.2d 760 (1980).

Subsection (1) does not apply to disabled vehicles, if the driver thereof observes such requirement so far as he is able and weather permits. *Vrba v. Kelly*, 198 Neb. 723, 255 N.W.2d 269 (1977).

#### **60-6,165 Persons authorized to remove vehicles; cost of removal; lien.**

(1) Whenever any peace officer, or any authorized employee of a law enforcement agency who is employed by a political subdivision of the state and specifically empowered by ordinance to act, finds a vehicle standing upon a highway in violation of any of the provisions of the Nebraska Rules of the Road, such individual may remove the vehicle, have such vehicle removed, or require the driver or other person in charge of the vehicle to move such vehicle to a position off the roadway of such highway or from such highway.

(2) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle prior to all other claims. Any person towing or storing a vehicle shall be entitled to retain possession of such vehicle until such charges are paid. The lien provided for in this section shall not apply to the contents of any vehicle.

**Source:** Laws 1973, LB 45, § 71; Laws 1984, LB 482, § 3; Laws 1988, LB 833, § 2; R.S.1943, (1988), § 39-671; Laws 1993, LB 370, § 261.

#### **60-6,166 Stopping, standing, or parking prohibited; exceptions.**

(1) Except when necessary to avoid conflict with other traffic or when in compliance with law or the directions of a peace officer or traffic control device, no person shall:

(a) Stop, stand, or park any vehicle:

(i) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(ii) On a sidewalk;

(iii) Within an intersection;

(iv) On a crosswalk;

(v) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone unless the Department of Transportation or the local authority indicates a different length by signs or markings;

(vi) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(vii) Upon any bridge or other elevated structure over a highway or within a highway tunnel;

(viii) On any railroad track; or

(ix) At any place where official signs prohibit stopping;

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(i) In front of a public or private driveway;

(ii) Within fifteen feet of a fire hydrant;

(iii) Within twenty feet of a crosswalk at an intersection;

(iv) Within thirty feet of any flashing signal, stop sign, yield sign, or other traffic control device located at the side of a roadway;

(v) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance when properly signposted; or

(vi) At any place where official signs prohibit standing; or

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

(i) Within fifty feet of the nearest rail of a railroad crossing; or

(ii) At any place where official signs prohibit parking.

(2) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as shall be unlawful.

**Source:** Laws 1973, LB 45, § 72; R.S.1943, (1988), § 39-672; Laws 1993, LB 370, § 262; Laws 2017, LB339, § 207.

**60-6,167 Parking regulations; signs; control by Department of Transportation or local authority.**

(1) Except as otherwise provided in this section, any vehicle stopped or parked upon a two-way roadway where parking is permitted shall be so stopped or parked with the right-hand wheels parallel to and within twelve

inches of the right-hand curb or edge of such roadway. No vehicle shall be parked upon a roadway when there is a shoulder adjacent to the roadway which is available for parking.

(2) Except when otherwise provided by a local authority, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of such roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or edge of the roadway or its left-hand wheels within twelve inches of the left-hand curb or edge of such roadway.

(3) A local authority may permit angle or center parking on any roadway, except that angle or center parking shall not be permitted on any federal-aid highway or on any part of the state highway system unless the Director-State Engineer has determined that such roadway is of sufficient width to permit angle or center parking without interfering with the free movement of traffic.

(4) The Department of Transportation or a local authority may prohibit or restrict stopping, standing, or parking on highways under its respective jurisdiction outside the corporate limits of any city or village and erect and maintain proper and adequate signs thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

**Source:** Laws 1973, LB 45, § 73; R.S.1943, (1988), § 39-673; Laws 1993, LB 370, § 263; Laws 1993, LB 575, § 18; Laws 2017, LB339, § 208.

#### **60-6,168 Unattended motor vehicles; conditions.**

No person having control or charge of a motor vehicle shall allow such vehicle to stand unattended on a highway without first: (1) Stopping the motor of such vehicle; (2) except for vehicles equipped with motor starters that may be actuated without a key, locking the ignition and removing the key from the ignition; (3) effectively setting the brakes thereon; and (4) when standing upon any roadway, turning the front wheels of such vehicle to the curb or side of such roadway.

**Source:** Laws 1973, LB 45, § 74; R.S.1943, (1988), § 39-674; Laws 1993, LB 370, § 264; Laws 2017, LB263, § 74.

#### **60-6,169 Limitations on backing vehicles.**

(1) The driver of a vehicle shall not back such vehicle on any roadway unless such movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back such vehicle upon any roadway or shoulder of any freeway.

**Source:** Laws 1973, LB 45, § 75; R.S.1943, (1988), § 39-675; Laws 1993, LB 370, § 265.

### (I) SPECIAL STOPS

#### **60-6,170 Obedience to signal indicating approach of train or on-track equipment; prohibited acts.**

(1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances set forth in this section, the driver of



such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he or she can do so safely. The requirements of this subsection shall apply when:

- (a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train or on-track equipment;
- (b) A crossing gate is lowered or a flagperson gives or continues to give a signal of the approach or passage of a railroad train or on-track equipment;
- (c) A railroad train or on-track equipment approaching within approximately one-quarter mile of the highway crossing emits a signal audible from such distance and such railroad train or on-track equipment, by reason of its speed or nearness to such crossing, is an immediate hazard;
- (d) An approaching railroad train or on-track equipment is plainly visible and is in hazardous proximity to such crossing;
- (e) A stop sign is erected at such crossing; or
- (f) A passive warning device is located at or in advance of such crossing and an approaching railroad train or on-track equipment is audible as described in subdivision (c) of this subsection or plainly visible and in hazardous proximity to such crossing. For purposes of this subdivision, passive warning device means the type of traffic control device, including a sign, marking, or other device, located at or in advance of a railroad grade crossing to indicate the presence of such crossing but which does not change aspect upon the approach or presence of a railroad train or on-track equipment.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

**Source:** Laws 1973, LB 45, § 55; R.S.1943, (1988), § 39-655; Laws 1993, LB 370, § 266; Laws 2019, LB81, § 4.

If there is a reasonable excuse for not seeing an approaching train, such as an obstruction preventing one from seeing the train or a distraction diverting the attention, the question whether traversing a railroad crossing is reasonable is a matter for the jury. *Crewdson v. Burlington Northern R. Co.*, 234 Neb. 631, 452 N.W.2d 270 (1990).

Where train was plainly visible and had emitted a signal within approximately one quarter of a mile from grade crossing which was audible from that distance, this section was clearly applicable to action of decedent prior to collision with train. *Wyatt v. Burlington Northern, Inc.*, 209 Neb. 212, 306 N.W.2d 902 (1981).

#### **60-6,171 Railroad crossing stop signs; jurisdiction.**

The Department of Transportation and local authorities on highways under their respective jurisdictions may designate particularly dangerous highway grade crossings of railroads and erect stop signs at the crossings. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

**Source:** Laws 1973, LB 45, § 56; R.S.1943, (1988), § 39-656; Laws 1993, LB 370, § 267; Laws 2017, LB339, § 209.

#### **60-6,172 Buses and school buses required to stop at all railroad grade crossings; exceptions.**

(1) The driver of any bus carrying passengers for hire or of any school bus, before crossing at grade any track of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for

any approaching railroad train or on-track equipment and for signals indicating the approach of a railroad train or on-track equipment, except as otherwise provided in the Nebraska Rules of the Road. The driver shall not proceed until he or she can do so safely. After stopping as required by this section and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such track and the driver shall not shift gears while crossing such track.

(2) No stop shall be made at any such crossing when a peace officer or a flagperson directs traffic to proceed or at an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position.

**Source:** Laws 1973, LB 45, § 57; Laws 1974, LB 863, § 1; R.S.1943, (1988), § 39-657; Laws 1993, LB 370, § 268; Laws 2019, LB81, § 5.

**60-6,173 Grade crossings; certain carriers; required to stop; exceptions.**

(1) The driver of any vehicle which is required to be placarded pursuant to section 75-364, before crossing at a grade any track of a railroad on streets and highways, shall stop such vehicle not more than fifty feet nor less than fifteen feet from the nearest rail or railroad and while stopped shall listen and look in both directions along the track for an approaching railroad train or on-track equipment. The driver shall not proceed until precaution has been taken to ascertain that the course is clear.

(2) The requirements of subsection (1) of this section shall not apply:

- (a) When a peace officer or a flagperson directs traffic to proceed;
- (b) At an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position; or
- (c) At railroad tracks used exclusively for industrial switching purposes within a business district.

(3) Nothing in this section shall be deemed to exempt the driver of any vehicle from compliance with the other requirements contained in the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 58; R.S.1943, (1988), § 39-658; Laws 1993, LB 370, § 269; Laws 1998, LB 1056, § 1; Laws 2019, LB81, § 6.

**60-6,174 Moving heavy equipment at railroad grade crossings; required to stop.**

(1) No person shall operate or move any crawler-type tractor, any steam shovel, any derrick, any roller, or any equipment or structure having a normal operating speed of ten miles per hour or less or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any track at a railroad grade crossing without first complying with this section.

(2) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped

shall listen and look in both directions along such track for any approaching railroad train or on-track equipment and for signals indicating the approach of a railroad train or on-track equipment. The person shall not proceed until the crossing can be made safely.

(3) No such crossing shall be made while warning is given by an automatic signal, by crossing gates, by a flagperson, or otherwise of the immediate approach of a railroad train or on-track equipment. If a flagperson is provided by the railroad, movement over the crossing shall be under his or her direction.

**Source:** Laws 1973, LB 45, § 59; R.S.1943, (1988), § 39-659; Laws 1993, LB 370, § 270; Laws 2019, LB81, § 7.

**60-6,175 School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.**

(1) Upon meeting or overtaking, from the front or rear, any school bus on which the yellow warning signal lights are flashing, the driver of a motor vehicle shall reduce the speed of such vehicle to not more than twenty-five miles per hour, shall bring such vehicle to a complete stop when the school bus is stopped, the stop signal arm is extended, and the flashing red signal lights are turned on, and shall remain stopped until the flashing red signal lights are turned off, the stop signal arm is retracted, and the school bus resumes motion. This section shall not apply to approaching traffic in the opposite direction on a divided highway or to approaching traffic when there is displayed a sign as provided in subsection (8) of this section directing traffic to proceed. Any person violating this subsection shall be guilty of a Class IV misdemeanor, shall be fined five hundred dollars, and shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182.

(2) Except as provided in subsection (8) of this section, the driver of any school bus, when stopping to receive or discharge pupils, shall turn on flashing yellow warning signal lights at a distance of not less than three hundred feet when inside the corporate limits of any city or village and not less than five hundred feet nor more than one thousand feet in any area outside the corporate limits of any city or village from the point where such pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils, the bus driver shall bring the school bus to a stop, extend a stop signal arm, and turn on the flashing red signal lights. After receiving or discharging pupils, the bus driver shall turn off the flashing red signal lights, retract the stop signal arm, and then proceed on the route.

(3)(a) Except as provided in subdivision (b) of this subsection, no school bus shall stop to load or unload pupils outside of the corporate limits of any city or village or on any part of the state highway system within the corporate limits of a city or village, unless there is at least four hundred feet of clear vision in each direction of travel.

(b) If four hundred feet of clear vision in each direction of travel is not possible as determined by the school district, a school bus may stop to load or unload pupils if there is proper signage installed indicating that a school bus stop is ahead.

(4) All pupils shall be received and discharged from the right front entrance of every school bus. If such pupils must cross a roadway, the bus driver shall instruct such pupils to cross in front of the school bus and the bus driver shall keep such school bus halted with the flashing red signal lights turned on and

the stop signal arm extended until such pupils have reached the opposite side of such roadway.

(5) The driver of a vehicle upon a divided highway need not stop upon meeting or passing a school bus which is on a different roadway or when upon a freeway and such school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(6) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words school bus in letters not less than eight inches high.

(7) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or school-sponsored activities, all markings thereon indicating school bus shall be covered or concealed. The stop signal arm and system of flashing yellow warning signal lights and flashing red signal lights shall not be operable through the usual controls.

(8) When a school bus is (a) parked in a designated school bus loading area which is out of the flow of traffic and which is adjacent to a school site or (b) parked on a roadway which possesses more than one lane of traffic flowing in the same direction and which is adjacent to a school site, the bus driver shall engage only the hazard warning flasher lights when receiving or discharging pupils if a school bus loading area warning sign is displayed. Such signs shall not be directly attached to any school bus but shall be free standing and placed at the rear of a parked school bus or line of parked school buses. No school district shall utilize a school bus loading area warning sign unless such sign complies with the manual. The manual shall include the requirements for size, material, construction, and required wording. The cost of any sign shall be an obligation of the school district.

**Source:** Laws 1973, LB 45, § 60; Laws 1974, LB 863, § 2; Laws 1977, LB 41, § 11; Laws 1987, LB 347, § 1; R.S.1943, (1988), § 39-660; Laws 1993, LB 370, § 271; Laws 1993, LB 575, § 10; Laws 2012, LB1039, § 2; Laws 2013, LB500, § 1; Laws 2019, LB190, § 6.

**60-6,176 Repealed. Laws 2019, LB190, § 8.**

**60-6,177 Signs relating to overtaking and passing school buses.**

The Department of Transportation shall post on highways of the state highway system outside of business and residential districts signs to the effect that it is unlawful to pass school buses stopped to load or unload children. Such signs shall be adequate in size and number to properly inform the public of the provisions relative to such passing.

**Source:** Laws 1973, LB 45, § 61; R.S.1943, (1988), § 39-661; Laws 1993, LB 370, § 273; Laws 2017, LB339, § 211.

(m) MISCELLANEOUS RULES

**60-6,178 Driving upon sidewalk; prohibited; exception.**

No person shall drive any vehicle upon a sidewalk except upon a permanent or duly authorized temporary driveway.

**Source:** Laws 1973, LB 45, § 76; R.S.1943, (1988), § 39-676; Laws 1993, LB 370, § 274.

**60-6,179 Overloading front seat or obstructing driver; prohibited.**

(1) No person shall drive a motor vehicle when it is so loaded, or when there is in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of such vehicle.

(2) No passenger in a vehicle shall ride in such a position as to interfere with the driver's view ahead or to the sides or to interfere with the driver's control over the driving mechanism of such vehicle.

**Source:** Laws 1973, LB 45, § 77; Laws 1975, LB 252, § 1; R.S.1943, (1988), § 39-677; Laws 1993, LB 370, § 275.

**60-6,179.01 Use of handheld wireless communication device; prohibited acts; enforcement; violation; penalty.**

(1) This section does not apply to an operator of a commercial motor vehicle if section 60-6,179.02 applies.

(2) Except as otherwise provided in subsection (3) of this section, no person shall use a handheld wireless communication device to read a written communication, manually type a written communication, or send a written communication while operating a motor vehicle which is in motion.

(3) The prohibition in subsection (2) of this section does not apply to:

(a) A person performing his or her official duties as a law enforcement officer, a firefighter, an ambulance driver, or an emergency medical technician; or

(b) A person operating a motor vehicle in an emergency situation.

(4) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(5) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(6) For purposes of this section:

(a) Commercial motor vehicle has the same meaning as in section 75-362;

(b)(i) Handheld wireless communication device means any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication.

(ii) Handheld wireless communication device includes, but is not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant, a pager, or a laptop computer.

(iii) Handheld wireless communication device does not include an electronic device that is part of the motor vehicle or permanently attached to the motor vehicle or a handsfree wireless communication device; and

(c) Written communication includes, but is not limited to, a text message, an instant message, electronic mail, and Internet websites.

**Source:** Laws 2010, LB945, § 3; Laws 2012, LB751, § 44; Laws 2014, LB983, § 55.

**60-6,179.02 Operator of commercial motor vehicle; operator of certain passenger motor vehicle; operator of school bus; texting while driving prohibited; exception; use of handheld mobile telephone while driving prohibited; exception; violation; penalty.**

(1)(a) Except as otherwise provided in subdivision (1)(b) of this section, no operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, shall engage in texting while driving such vehicle.

(b) Texting while driving is permissible by an operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, when necessary to communicate with law enforcement officials or other emergency services.

(2)(a) Except as otherwise provided in subdivision (2)(b) of this section, no operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, shall use a handheld mobile telephone while driving and no motor carrier shall allow or require its operators to use a handheld mobile telephone while driving such vehicle.

(b) Using a handheld mobile telephone is permissible by an operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, when necessary to communicate with law enforcement officials or other emergency services.

(3)(a) Except as otherwise provided in subdivision (3)(b) of this section, no operator of a school bus shall engage in texting during school bus operations.

(b) Texting while driving is permissible by an operator of a school bus during school bus operations when necessary to communicate with law enforcement officials or other emergency services.

(4)(a) Except as otherwise provided in subdivision (4)(b) of this section, no operator of a school bus shall use a handheld mobile telephone during school bus operations.

(b) Using a handheld mobile telephone is permissible by an operator of a school bus during school bus operations when necessary to communicate with law enforcement officials or other emergency services.

(5) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be subject to disqualification as provided in section 60-4,168, shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182, and shall be fined:

- (a) Two hundred dollars for the first offense;
- (b) Three hundred dollars for a second offense; and
- (c) Five hundred dollars for a third and subsequent offense.
- (6) For purposes of this section:
  - (a) Commercial motor vehicle has the same meaning as in section 75-362;
  - (b) Driving means operating a commercial motor vehicle, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the operator moves the vehicle to the side of, or off, a highway and halts in a location where the vehicle can safely remain stationary;
  - (c) Electronic device includes, but is not limited to, a cellular telephone; a personal digital assistant; a pager; a computer; or any other device used to input, write, send, receive, or read text;
  - (d) Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service as defined in regulations of the Federal Communications Commission, 47 C.F.R. 20.3. Mobile telephone does not include two-way or citizens band radio services;
  - (e) School bus operations means the use of a school bus to transport school children or school personnel;
  - (f)(i) Texting means manually entering alphanumeric text into, or reading text from, an electronic device. This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access an Internet web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry for present or future communication.
    - (ii) Texting does not include:
      - (A) Inputting, selecting, or reading information on a global positioning system or navigation system;
      - (B) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or
      - (C) Using a device capable of performing multiple functions, including, but not limited to, fleet management systems, dispatching devices, smartphones, citizens band radios, and music players, for a purpose other than texting; and
    - (g) Use a handheld mobile telephone means:
      - (i) Using at least one hand to hold a mobile telephone to conduct a voice communication;
      - (ii) Dialing or answering a mobile telephone by pressing more than a single button; or
      - (iii) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position and restrained by a seat belt that is installed in accordance with 49 C.F.R. 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

**Source:** Laws 2012, LB751, § 45; Laws 2014, LB983, § 56.

**60-6,180 Opening and closing vehicle doors; restriction.**

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and it can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload property or passengers.

**Source:** Laws 1973, LB 45, § 78; R.S.1943, (1988), § 39-678; Laws 1993, LB 370, § 276.

**60-6,181 Traversing defiles, canyons, or mountain highways; audible warning.**

The driver of a motor vehicle traversing defiles, canyons, or mountain highways shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with a horn or other device.

**Source:** Laws 1973, LB 45, § 79; R.S.1943, (1988), § 39-679; Laws 1993, LB 370, § 277.

**60-6,182 Traveling on a downgrade; gears; position.**

The driver of a motor vehicle when traveling upon a downgrade upon any highway shall not coast with the gears of such vehicle in neutral.

**Source:** Laws 1973, LB 45, § 80; R.S.1943, (1988), § 39-680; Laws 1993, LB 370, § 278.

**60-6,183 Following fire apparatus in response to an alarm; prohibited.**

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

**Source:** Laws 1973, LB 45, § 81; R.S.1943, (1988), § 39-681; Laws 1993, LB 370, § 279.

**60-6,184 Restrictions on driving over unprotected fire hose.**

No vehicle shall be driven over unprotected hose of a fire department when laid down on any highway or private road or driveway, in use or to be used at any fire or alarm of fire, without the consent of the fire department official in command.

**Source:** Laws 1973, LB 45, § 82; R.S.1943, (1988), § 39-682; Laws 1993, LB 370, § 280.

## (n) SPEED RESTRICTIONS

**60-6,185 Basic rule; speed.**

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. A person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a



hillcrest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

**Source:** Laws 1993, LB 370, § 281.

**Cross References**

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

This section is not unconstitutional. *State v. Padley*, 195 Neb. 358, 237 N.W.2d 883 (1976).

Unreasonable classification of persons is not created hereby. *State ex rel. Douglas v. Gradwohl*, 194 Neb. 745, 235 N.W.2d 854 (1975).

**60-6,186 Speed; maximum limits; signs.**

(1) Except when a special hazard exists that requires lower speed for compliance with section 60-6,185, the limits set forth in this section and sections 60-6,187, 60-6,188, 60-6,305, and 60-6,313 shall be the maximum lawful speeds unless reduced pursuant to subsection (2) of this section, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

- (a) Twenty-five miles per hour in any residential district;
- (b) Twenty miles per hour in any business district;
- (c) Fifty miles per hour upon any highway that is gravel or not dustless surfaced;
- (d) Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;
- (e) Sixty-five miles per hour upon any four-lane divided highway not a part of the state highway system;
- (f) Sixty-five miles per hour upon any part of the state highway system other than an expressway, a super-two highway, or a freeway;
- (g) Seventy miles per hour upon an expressway or a super-two highway that is part of the state highway system;
- (h) Seventy miles per hour upon a freeway that is part of the state highway system but not part of the National System of Interstate and Defense Highways; and
- (i) Seventy-five miles per hour upon the National System of Interstate and Defense Highways, except that the maximum speed limit shall be sixty-five miles per hour for:
  - (i) Any portion of the National System of Interstate and Defense Highways located in Douglas County; and
  - (ii) That portion of the National System of Interstate and Defense Highways designated as Interstate 180 in Lancaster County and Interstate 129 in Dakota County.

(2) The maximum speed limits established in subsection (1) of this section may be reduced by the Department of Transportation or by local authorities pursuant to section 60-6,188 or 60-6,190.

(3) The Department of Transportation and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as they deem necessary to give adequate

notice of the speed limits established pursuant to subsection (1) or (2) of this section upon such highways.

**Source:** Laws 1973, LB 45, § 62; Laws 1974, LB 873, § 1; Laws 1975, LB 381, § 1; Laws 1977, LB 256, § 1; Laws 1987, LB 430, § 1; R.S.1943, (1988), § 39-662; Laws 1993, LB 370, § 282; Laws 1996, LB 901, § 7; Laws 2007, LB35, § 2; Laws 2017, LB339, § 212; Laws 2018, LB1009, § 6.

**Cross References**

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. *McFarland v. King*, 216 Neb. 92, 341 N.W.2d 920 (1983).

This section is not unconstitutional. *State v. Padley*, 195 Neb. 358, 237 N.W.2d 883 (1976).

Unreasonable classification of persons is not created hereby. *State ex rel. Douglas v. Gradwohl*, 194 Neb. 745, 235 N.W.2d 854 (1975).

**60-6,187 Special speed limitations; motor vehicle towing a mobile home; motor-driven cycle.**

(1) No person shall operate any motor vehicle when towing a mobile home at a rate of speed in excess of fifty miles per hour.

(2)(a) A person may operate any motor-driven cycle at a speed in excess of thirty-five miles per hour upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least three hundred feet ahead and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(b) A person may operate any motor-driven cycle at a speed in excess of twenty-five miles per hour, but not more than thirty-five miles per hour, upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least one hundred feet ahead, but less than three hundred feet ahead, and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(c) A person shall not operate any motor-driven cycle upon a roadway at nighttime if the headlight or headlights do not reveal a person or vehicle in such roadway at least one hundred feet ahead, or the taillight is not visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

**Source:** Laws 1973, LB 45, § 66; Laws 1974, LB 873, § 2; Laws 1975, LB 381, § 2; Laws 1977, LB 256, § 2; Laws 1979, LB 23, § 2; Laws 1987, LB 430, § 2; Laws 1987, LB 504, § 2; Laws 1990, LB 369, § 1; R.S.Supp.,1992, § 39-666; Laws 1993, LB 370, § 283; Laws 1996, LB 901, § 8; Laws 2005, LB 80, § 1.

**Cross References**

**Livestock forage vehicles**, speed limits, see section 60-6,305.

**Mopeds**, maximum speed, see section 60-6,313.

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby.  
State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d  
854 (1975).

**60-6,188 Construction zone; signs; Director-State Engineer; authority.**

(1) The maximum speed limit through any maintenance, repair, or construction zone on the state highway system shall be thirty-five miles per hour in rural areas and twenty-five miles per hour in urban areas.

(2) Such speed limits shall take effect only after appropriate signs giving notice of the speed limit are erected or displayed in a conspicuous place in advance of the area where the maintenance, repair, or construction activity is or will be taking place. Such signs shall conform to the manual and shall be regulatory signs imposing a legal obligation and restriction on all traffic proceeding into the maintenance, construction, or repair zone. The signs may be displayed upon a fixed, variable, or movable stand. While maintenance, construction, or repair is being performed, the signs may be mounted upon moving Department of Transportation vehicles displaying such signs well in advance of the maintenance zone.

(3) The Director-State Engineer may increase the speed limit through any highway maintenance, repair, or construction zone in increments of five miles per hour if the speed set does not exceed the maximum speed limits established in sections 60-6,186, 60-6,187, 60-6,189, 60-6,190, 60-6,305, and 60-6,313. The Director-State Engineer may delegate the authority to raise speed limits through any maintenance, repair, or construction zone to any department employee in a supervisory capacity or may delegate such authority to a county, municipal, or local engineer who has the duty to maintain the state highway system in such jurisdiction if the maintenance is performed on behalf of the department by contract with the local authority. Such increased speed limit through a maintenance, repair, or construction zone shall be effective when the Director-State Engineer or any officer to whom authority has been delegated gives a written order for such increase and signs posting such speed limit are erected or displayed.

(4) The Department of Transportation shall post signs in maintenance, repair, or construction zones which inform motorists that the fine for exceeding the posted speed limit in such zones is doubled.

**Source:** Laws 1993, LB 370, § 284; Laws 1996, LB 901, § 9; Laws 2017, LB339, § 213.

**60-6,189 Driving over bridges; maximum speed; determination by Department of Transportation or local authority; effect.**

(1) No person shall drive a vehicle over any public bridge, causeway, viaduct, or other elevated structure at a speed which is greater than the maximum speed which can be maintained with safety thereon when such structure is posted with signs as provided in subsection (2) of this section.

(2) The Department of Transportation or a local authority may conduct an investigation of any bridge or other elevated structure constituting a part of a highway under its jurisdiction, and if it finds that such structure cannot safely withstand vehicles traveling at the speed otherwise permissible, the department or local authority shall determine and declare the maximum speed of vehicles which such structure can safely withstand and shall cause suitable signs stating

such maximum speed to be erected and maintained before each end of such structure.

(3) Upon the trial of any person charged with a violation of subsection (1) of this section, proof of such determination of the maximum speed by the department or local authority and the existence of such signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety on such bridge or structure.

**Source:** Laws 1993, LB 370, § 285; Laws 2017, LB339, § 214.

**Cross References**

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby.  
State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

**60-6,190 Establishment of state speed limits; power of Department of Transportation; other than state highway system; power of local authority; signs.**

(1) Whenever the Department of Transportation determines, upon the basis of an engineering and traffic investigation, that any maximum speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, place, or part of the state highway system outside of the corporate limits of cities and villages as well as inside the corporate limits of cities and villages on freeways which are part of the state highway system, it may determine and set a reasonable and safe maximum speed limit for such intersection, place, or part of such highway which shall be the lawful speed limit when appropriate signs giving notice thereof are erected at such intersection, place, or part of the highway, except that the maximum rural and freeway limits shall not be exceeded. Such a maximum speed limit may be set to be effective at all times or at such times as are indicated upon such signs.

(2) The speed limits set by the department shall not be a departmental rule, regulation, or order subject to the statutory procedures for such rules, regulations, or orders but shall be an authorization over the signature of the Director-State Engineer and shall be maintained on permanent file at the headquarters of the department. Certified copies of such authorizations shall be available from the department at a reasonable cost for duplication. Any change to such an authorization shall be made by a new authorization which cancels the previous authorization and establishes the new limit, but the new limit shall not become effective until signs showing the new limit are erected as provided in subsection (1) of this section.

(3) On county highways which are not part of the state highway system or within the limits of any state institution or any area under control of the Game and Parks Commission or a natural resources district and which are outside of the corporate limits of cities and villages, county boards shall have the same power and duty to alter the maximum speed limits as the department if the change is based on an engineering and traffic investigation comparable to that made by the department. The limit outside of a business or residential district shall not be decreased to less than thirty-five miles per hour.

(4) On all highways within their corporate limits, except on state-maintained freeways which are part of the state highway system, incorporated cities and villages shall have the same power and duty to alter the maximum speed limits as the department if the change is based on engineering and traffic investiga-

tion, except that no imposition of speed limits on highways which are part of the state highway system in cities and villages under forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be effective without the approval of the department.

(5) The director of any state institution, the Game and Parks Commission, or a natural resources district, with regard to highways which are not a part of the state highway system, which are within the limits of such institution or area under Game and Parks Commission or natural resources district control, and which are outside the limits of any incorporated city or village, shall have the same power and duty to alter the maximum speed limits as the department if the change is based on an engineering and traffic investigation comparable to that made by the department.

(6) Not more than six such speed limits shall be set per mile along a highway, except in the case of reduced limits at intersections. The difference between adjacent speed limits along a highway shall not be reduced by more than twenty miles per hour, and there shall be no limit on the difference between adjacent speed limits for increasing speed limits along a highway.

(7) When the department or a local authority determines by an investigation that certain vehicles in addition to those specified in sections 60-6,187, 60-6,305, and 60-6,313 cannot with safety travel at the speeds provided in sections 60-6,186, 60-6,187, 60-6,189, 60-6,305, and 60-6,313 or set pursuant to this section or section 60-6,188 or 60-6,189, the department or local authority may restrict the speed limit for such vehicles on highways under its respective jurisdiction and post proper and adequate signs.

**Source:** Laws 1973, LB 45, § 63; Laws 1984, LB 861, § 17; Laws 1986, LB 436, § 1; R.S.1943, (1988), § 39-663; Laws 1993, LB 370, § 286; Laws 1996, LB 901, § 10; Laws 2010, LB805, § 11; Laws 2017, LB113, § 50; Laws 2017, LB339, § 215.

**Cross References**

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby.  
State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

**60-6,191 Repealed. Laws 1993, LB 575, § 55.**

**60-6,192 Speed determination; use of speed measurement devices; requirements; apprehension of driver; when.**

(1) Determinations made regarding the speed of any motor vehicle based upon the visual observation of any peace officer, while being competent evidence for all other purposes, shall be corroborated by the use of a radio microwave, mechanical, or electronic speed measurement device. The results of such radio microwave, mechanical, or electronic speed measurement device may be accepted as competent evidence of the speed of such motor vehicle in any court or legal proceeding when the speed of the vehicle is at issue. Before the state may offer in evidence the results of such radio microwave, mechanical, or electronic speed measurement device for the purpose of establishing the speed of any motor vehicle, the state shall prove the following:

(a) The radio microwave, mechanical, or electronic speed measurement device was in proper working order at the time of conducting the measurement;

(b) The radio microwave, mechanical, or electronic speed measurement device was being operated in such a manner and under such conditions so as to allow a minimum possibility of distortion or outside interference;

(c) The person operating the radio microwave, mechanical, or electronic speed measurement device and interpreting such measurement was qualified by training and experience to properly test and operate the radio microwave, mechanical, or electronic speed measurement device; and

(d) The operator conducted external tests of accuracy upon the radio microwave, mechanical, or electronic speed measurement device, within a reasonable time both prior to and subsequent to an arrest being made, and the device was found to be in proper working order.

(2) The driver of any motor vehicle measured by use of a radio microwave, mechanical, or electronic speed measurement device to be driving in excess of the applicable speed limit may be apprehended if the apprehending officer:

(a) Is in uniform and displays his or her badge of authority; and

(b)(i) Has observed the recording of the speed of the motor vehicle by the radio microwave, mechanical, or electronic speed measurement device; or

(ii) Has received a radio message from a peace officer who observed the speed recorded and the radio message (A) has been dispatched immediately after the speed of the motor vehicle was recorded and (B) gives a description of the vehicle and its recorded speed.

**Source:** Laws 1973, LB 45, § 64; Laws 1983, LB 88, § 1; R.S.1943, (1988), § 39-664; Laws 1993, LB 370, § 288; Laws 1993, LB 25, § 1.

Before evidence of vehicular speed determined by use of a speed measurement device is admissible, the State must establish with reasonable proof that the equipment was accurate and functioning properly at the time the determination of the speed of the vehicle was made. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

To present "reasonable proof" that a primary measuring instrument that measures the speed of a vehicle was operating correctly, one must show that such device was tested against a device whose instrumental integrity or reliability had been established. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

Where evidence of speed is adduced not to establish a driver's rate of travel so as to prove a charge that he or she exceeded a particular speed limit, but, rather, as one piece of evidence tending to establish that the driver operated a vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property, the speed is not "at issue", as contemplated by this section and therefore need not be corroborated by a microwave, mechanical, or electronic speed measurement device. *State v. Hill*, 254 Neb. 460, 577 N.W.2d 259 (1998).

The speed of a vehicle is not at issue under this section when the crime charged is reckless driving and evidence is adduced to establish the defendant drove in a manner demonstrating indifferent or wanton disregard for the safety of persons or property. *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997).

In order to support admission of a VASCAR speed measurement into evidence, the record must reflect compliance with the requirements for the operation and testing of the measuring device as described in subsection (1) of this section. *State v. Chambers*, 241 Neb. 66, 486 N.W.2d 481 (1992).

The accuracy of a primary measuring device must be tested against a reliable testing device. *State v. Chambers*, 241 Neb. 60, 486 N.W.2d 219 (1992).

Radar-based evidence of defendant's speed inadmissible where police officer testified that he had tested radar unit using "inscribed" tuning fork which was not shown to be intended or accurate for that purpose. *State v. Lomack*, 239 Neb. 368, 476 N.W.2d 237 (1991).

Subsection (2) of this section should be read to require a showing of subparts (a) and (c) or a showing of subparts (b) and (c). *State v. Kincaid*, 235 Neb. 89, 453 N.W.2d 738 (1990).

A battery-operated stopwatch is not an "electronic speed measurement" device within the purview of this section. *State v. Chambers*, 233 Neb. 235, 444 N.W.2d 667 (1989).

Corroboration of testimony estimating the rate of speed by visual observation of an officer is not needed when the testimony is offered to show that the defendant was driving recklessly rather than that the defendant was speeding. *State v. Howard*, 5 Neb. App. 596, 560 N.W.2d 516 (1997).

### **60-6,193 Minimum speed regulation; impeding traffic.**

(1) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a freeway no motor vehicle, except emergency vehicles, shall be operated at a speed of less than forty miles per hour or at such a slow speed as

to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for the safe operation of the motor vehicle because of weather, visibility, roadway, or traffic conditions. All vehicles entering or leaving such freeway from an acceleration or deceleration lane shall conform with the minimum speed regulations while they are within the roadway of the freeway. The minimum speed of forty miles per hour may be altered by the Department of Transportation or local authorities on freeways under their respective jurisdictions.

(3) Whenever the department or any local authority within its respective jurisdiction determines on the basis of an engineering and traffic investigation that low speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the department or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

(4) Vehicular, animal, and pedestrian traffic prohibited on freeways by the Nebraska Rules of the Road shall not travel on any other roadway where minimum speed limits of twenty miles per hour or more are posted.

(5) Any minimum speed limit which is imposed under subsection (2) or (3) of this section shall not be effective until appropriate and adequate signs are erected along the roadway affected by such regulation apprising motorists of such limitation.

(6) On any freeway, or other highway providing for two or more lanes of travel in one direction, vehicles shall not intentionally impede the normal flow of traffic by traveling side by side and at the same speed while in adjacent lanes. This subsection shall not be construed to prevent vehicles from traveling side by side in adjacent lanes because of congested traffic conditions.

**Source:** Laws 1973, LB 45, § 65; R.S.1943, (1988), § 39-665; Laws 1993, LB 370, § 289; Laws 2017, LB339, § 216.

Applicability of this section depends on the factual setting; when a motorist's view of a railroad crossing is obstructed, he has no absolute duty to stop before traveling across, but such duty to stop exists where a reasonably prudent person in the

exercise of ordinary care would have considered a stop necessary under the circumstances. *Anderson v. Union Pacific RR. Co.*, 229 Neb. 321, 426 N.W.2d 518 (1988).

**60-6,194 Charging violations of speed regulation; summons; burden of proof; elements of offense.**

(1) In every charge of violation of any speed regulation in the Nebraska Rules of the Road, the complaint and the summons or notice to appear shall specify the speed at which defendant is alleged to have driven and the maximum speed for the type of vehicle involved applicable within the district or at the location. The speed at which defendant is alleged to have driven and the maximum speed are essential elements of the offense and shall be proved by competent evidence.

(2) The provisions of the rules which set maximum speed limitations shall not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

**Source:** Laws 1973, LB 45, § 67; R.S.1943, (1988), § 39-667; Laws 1993, LB 370, § 290; Laws 1993, LB 26, § 1.

**60-6,195 Racing on highways; violation; penalty.**

(1) No person shall drive any vehicle on any highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

(2) For purposes of this section:

(a) Drag race shall mean the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course, each starting at the same point and proceeding to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit; and

(b) Racing shall mean the use of one or more vehicles in an attempt to outgain or outdistance another vehicle, to prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

(3) Any person convicted of violating this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1973, LB 45, § 68; Laws 1989, LB 285, § 2; R.S.Supp.,1992, § 39-668; Laws 1993, LB 370, § 291.

Where a person is injured by the racing of two or more other parties on a public highway, all engaged in the race are liable, although only one of the vehicles came in contact with the injured person or the vehicle in which he was riding. Janssen v. Trennepohl, 228 Neb. 6, 421 N.W.2d 4 (1988).

(o) ALCOHOL AND DRUG VIOLATIONS

**60-6,196 Driving under influence of alcoholic liquor or drug; penalties.**

(1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(a) While under the influence of alcoholic liquor or of any drug;

(b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or

(c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) Any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subsection (1) of this section shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

**Source:** Laws 1919, c. 190, tit. VII, art. IV, § 32, p. 830; C.S.1922, § 8396; Laws 1925, c. 159, § 13, p. 418; Laws 1927, c. 153, § 1, p. 411; Laws 1929, c. 144, § 1, p. 505; C.S.1929, § 39-1106; Laws 1931, c. 103, § 1, p. 275; Laws 1935, c. 134, § 2, p. 484; Laws 1937, c. 140, § 1, p. 504; C.S.Supp.,1941, § 39-1106; R.S.1943, § 39-727; Laws 1947, c. 148, § 1, p. 408; Laws 1949, c. 116, § 1, p. 310; Laws 1951, c. 118, § 1, p. 528; Laws 1953, c. 135, § 1, p. 422; Laws 1953, c. 214, § 1, p. 755; Laws 1961, c. 186, § 1, p. 574; Laws 1971, LB 948, § 1; Laws 1972, LB 1095, § 1; Laws 1973, LB 290, § 1; R.S.Supp.,1973, § 39-727; Laws 1978, LB 748, § 52;



Laws 1980, LB 651, § 1; Laws 1982, LB 568, § 5; Laws 1986, LB 153, § 3; Laws 1987, LB 404, § 1; Laws 1988, LB 377, § 1; Laws 1990, LB 799, § 1; Laws 1992, LB 291, § 4; R.S.Supp.,1992, § 39-669.07; Laws 1993, LB 370, § 292; Laws 1993, LB 564, § 7; Laws 1998, LB 309, § 13; Laws 1999, LB 585, § 5; Laws 2000, LB 1004, § 1; Laws 2001, LB 38, § 47; Laws 2001, LB 166, § 4; Laws 2001, LB 773, § 15; Laws 2003, LB 209, § 11; Laws 2004, LB 208, § 10.

#### Cross References

**Applicability of statute to private property**, see section 60-6,108.

**Conviction of felony involving use of motor vehicle**, transmittal of abstract, see section 60-497.02.

**Ineligibility for pretrial diversion**, see section 29-3604.

**Motor vehicle homicide penalty**, see section 28-306.

**Operator's license**, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

**Violation of ordinance**, prosecuting attorney, consult victim, see section 29-120.

1. Constitutionality
2. Motor vehicle homicide
3. Manslaughter
4. Elements
5. Impairment or under influence
6. Operation or actual physical control
7. Miscellaneous

#### 1. Constitutionality

Successive, separate prosecutions under this section for driving while intoxicated and operating a motor vehicle with a suspended license do not violate the Double Jeopardy Clause of the U.S. Constitution. *State v. Grimm*, 240 Neb. 863, 484 N.W.2d 830 (1992).

This section does not violate equal protection. Proscribing a particular concentration of breath alcohol is not wholly irrelevant to achieving the purpose of prohibiting people from driving while under the influence of drugs or alcohol. The relationship between the classification and its goal is rational. *State v. Kubik*, 235 Neb. 612, 456 N.W.2d 487 (1990).

Statute is valid exercise of police power, and court in which such conviction is had, is vested with jurisdiction to enforce statutory provisions. *Smith v. State*, 124 Neb. 587, 247 N.W. 421 (1933).

#### 2. Motor vehicle homicide

When the predicate offense for motor vehicle homicide is drunk driving in violation of this section, drunk driving is a lesser-included offense in motor vehicle homicide. *State v. Hoffman*, 227 Neb. 131, 416 N.W.2d 231 (1987).

Driving an automobile while under the influence of alcoholic liquor was an unlawful act upon which conviction of motor vehicle homicide could be based. *Rimpley v. State*, 169 Neb. 171, 98 N.W.2d 868 (1959).

#### 3. Manslaughter

Death arising from violation of this section may constitute manslaughter. *Vaca v. State*, 150 Neb. 516, 34 N.W.2d 873 (1948).

Operating motor vehicle while under the influence of intoxicating liquor is an unlawful act under manslaughter statute. *Anderson v. State*, 150 Neb. 116, 33 N.W.2d 362 (1948).

Conviction of manslaughter was sustained where driver was intoxicated. *Benton v. State*, 124 Neb. 485, 247 N.W. 21 (1933).

Defendant may be tried and punished under general statute relating to manslaughter, though acts charged may be punishable under this section. *Crawford v. State*, 116 Neb. 125, 216 N.W. 294 (1927).

#### 4. Elements

The essential elements of this section are (1) the defendant was operating or was in actual physical control of a motor vehicle; and (2) at the time, he or she was either (a) under the

influence of alcoholic liquor or of any drug, (b) had a concentration of .08 of 1 gram or more by weight of alcohol per 100 milliliters of his or her blood, or (c) had a concentration of .08 of 1 gram or more by weight of alcohol per 210 liters of his or her breath. *State v. Grutell*, 305 Neb. 843, 943 N.W.2d 258 (2020).

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle in violation of this section or section 60-6,197, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

This section only requires proof that the defendant was under the influence of any drug and does not require the drug to be identified by the arresting officer. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

Pursuant to subsection (1)(a) of this section, it is a crime to operate a motor vehicle under the influence of alcoholic liquor or drugs, or both, to a degree that the alcoholic liquor or drugs, or both, appreciably impair the driver's ability to operate the motor vehicle. *State v. Falcon*, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, the State is required to prove that the defendant was in actual physical control of a motor vehicle and that the defendant's ability to operate a motor vehicle was impaired by reason of the influence of alcoholic liquor or of drugs. *State v. Falcon*, 260 Neb. 119, 615 N.W.2d 436 (2000).

A violation of this section is one offense, but it can be proved in more than one way, i.e., excessive blood alcohol content shown through a chemical test or by evidence of physical impairment plus other well-known indicia of intoxication. *State v. Blackman*, 254 Neb. 941, 580 N.W.2d 546 (1998).

A violation of this section is one offense, which may be proven in different ways. A person's breath alcohol concentration may be probative of impairment under subsection (1), as well as proof of a violation of this section based solely on breath alcohol concentration pursuant to subsection (3). *State v. Kubik*, 235 Neb. 612, 456 N.W.2d 487 (1990).

An alcohol violation in this section may be proved in either one of two ways: (1) that a person operated or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor; or (2) that a person while driving a motor vehicle or who was in physical control of a motor vehicle had

ten-hundredths of one percent or more by weight of alcohol in his/her body fluid as shown by chemical analysis of his/her blood, breath, or urine. *State v. Babcock*, 227 Neb. 649, 419 N.W.2d 527 (1988).

An alcohol-related violation of this provision may be proved by establishing that one was in actual physical control of a motor vehicle while under the influence of alcohol or that one was in actual physical control of a motor vehicle while having ten-hundredths of 1 percent by weight of alcohol in his or her body fluid. *State v. Burling*, 224 Neb. 725, 400 N.W.2d 872 (1987).

The substantive offense is driving while under the influence of alcohol or with more than .10 percent of alcohol in one's body fluid. The number of times a person has previously been convicted of such a charge is not itself a crime but, rather, is a factor which the trial court is to consider in imposing sentence. *State v. Jameson*, 224 Neb. 38, 395 N.W.2d 744 (1986).

This section defines one offense which can be proved by any of three ways: (1) By proof that the defendant was in physical control of a motor vehicle while under the influence of alcoholic liquor; (2) by proof that the defendant was in physical control of a motor vehicle while under the influence of any drug; or (3) by proof that the defendant was in physical control of a motor vehicle while having ten-hundredths of one percent or more by weight of alcohol in his or her body fluid. *State v. Hilker*, 210 Neb. 810, 317 N.W.2d 82 (1982).

A violation of this section is either a misdemeanor or a felony and is not a traffic infraction within the meaning of section 39-602(106), R.R.S. 1943 (currently section 60-672). *State v. Karel*, 204 Neb. 573, 284 N.W.2d 12 (1979).

This section defines but one offense which may result from three conditions. *State v. Jablonski*, 199 Neb. 341, 258 N.W.2d 918 (1977).

This section defines but one offense. *State v. Weidner*, 192 Neb. 161, 219 N.W.2d 742 (1974).

Instructions given correctly set forth the elements of driving under influence and driving with ten-hundredths of one percent of alcohol in the body fluid. *State v. Tripple*, 190 Neb. 713, 211 N.W.2d 920 (1973).

Only one crime is defined. *Uldrich v. State*, 162 Neb. 746, 77 N.W.2d 305 (1956).

Statute defines but one crime, that of operating a motor vehicle while under the influence of alcoholic liquor or drug. *Haffke v. State*, 149 Neb. 83, 30 N.W.2d 462 (1948).

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).

##### 5. Impairment or under influence

As used in this section, the phrase "under the influence of alcoholic liquor or of any drug" requires the ingestion of alcohol or drugs in an amount sufficient to impair to any appreciable degree the driver's ability to operate a motor vehicle in a prudent and cautious manner. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

Whether impairment is caused by alcohol or drugs, a conviction for a violation of this section may be sustained by either a law enforcement officer's observations of a defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

If a test for the presence of alcohol or drugs is utilized, it is one piece of evidence that the defendant's ability to operate a motor vehicle is impaired; it is not conclusive under subsection (1)(a) of this section. *State v. Falcon*, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, impairment can be shown by observations of witnesses, particularly police offi-

cers who are trained to make these observations. *State v. Falcon*, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, the phrase "under the influence of alcoholic liquor or of any drug" means the ingestion of alcohol or drugs in an amount sufficient to impair to any appreciable degree the driver's ability to operate a motor vehicle in a prudent and cautious manner. *State v. Falcon*, 260 Neb. 119, 615 N.W.2d 436 (2000).

It is not necessary for a conviction for driving under the influence of alcoholic liquor that a sample of blood, breath, or urine show a certain concentration of alcohol in a defendant's blood, breath, or urine, as those are alternate offenses under this section. Either a law enforcement officer's observations of the defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests constitutes sufficient evidence to sustain a conviction of driving while under the influence of alcoholic beverages. *State v. Green*, 238 Neb. 328, 470 N.W.2d 736 (1991).

A test made in compliance with section 39-669.11 (transferred to section 60-6,201) is sufficient to make a prima facie case on the issue of blood alcohol concentration. Matters of driving and testing are properly viewed as going to the weight of the breath test results, rather than to the admissibility of the evidence. A valid breath test given within a reasonable time after the accused was stopped is probative of a violation of this section. *State v. Kubik*, 235 Neb. 612, 456 N.W.2d 487 (1990).

As used in this section, the phrase "under the influence of alcoholic liquor" means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. *State v. Batts*, 233 Neb. 776, 448 N.W.2d 136 (1989).

The phrase "under the influence of alcohol" means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. *State v. Thomte*, 226 Neb. 659, 413 N.W.2d 916 (1987).

A breath test result which is subject to a margin of error must be adjusted so as to give the defendant the benefit of that margin. However, when there is a conflict in the evidence as to what that margin of error actually is, we will affirm the decision of the trier of fact so long as there is sufficient evidence in the record, if believed, to sustain its finding of guilt. *State v. Hvistendahl*, 225 Neb. 315, 405 N.W.2d 273 (1987).

The phrase "under the influence of alcoholic liquor," as used in this provision, means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. *State v. Burling*, 224 Neb. 725, 400 N.W.2d 872 (1987).

Presumption arising from body fluid test applies only to prosecutions under this section. *Hoffman v. State*, 160 Neb. 375, 70 N.W.2d 314 (1955).

Conviction sustained of drunken driving based in part on evidence of blood test. *Schacht v. State*, 154 Neb. 858, 50 N.W.2d 78 (1951).

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).

Evidence which went before a jury of a defendant's failure to pass a chemical breath test for which he was not properly advised of the consequences was prejudicial and constituted plain error so as to require a reversal of the conviction and a remand for a new trial. *State v. Hingst*, 4 Neb. App. 768, 550 N.W.2d 686 (1996).

##### 6. Operation or actual physical control

Being in "actual physical control" is distinct from "operating" a motor vehicle and is interpreted broadly to address the risk that a person not yet operating a motor vehicle might begin operating that vehicle with very little effort or delay. *State v. Pester*, 294 Neb. 995, 885 N.W.2d 713 (2016).

Where the evidence established that the defendant was found behind the wheel of a vehicle which was parked on an Interstate off ramp with the engine running and the headlights on, there was sufficient evidence for the trier of fact to establish that the defendant was operating a motor vehicle. *State v. Johnson*, 250 Neb. 933, 554 N.W.2d 126 (1996).

“Operate,” as used in this section, refers to the actual physical handling of the controls of the vehicle while under the influence of intoxicating liquor; therefore, it is unlawful for any person to actually physically handle the controls of any motor vehicle while under the influence of alcohol or while having the prohibited amount of alcohol in one’s breath. *State v. Baker*, 236 Neb. 261, 461 N.W.2d 251 (1990).

Circumstantial evidence may be used to establish physical control of a motor vehicle within the meaning of this section. *State v. Miller*, 226 Neb. 576, 412 N.W.2d 849 (1987).

Evidence was sufficient to find defendant guilty of driving while under the influence in violation of this section, where he was found asleep at the wheel of an automobile parked in the roadway and appeared intoxicated when awakened. Circumstantial evidence may serve to establish the operation or actual physical control of a motor vehicle, under the provisions of this section. *State v. Baker*, 224 Neb. 130, 395 N.W.2d 766 (1986).

A complaint for violation of this section need not allege that a defendant operated a motor vehicle on a public highway. *State v. Golgert*, 223 Neb. 950, 395 N.W.2d 520 (1986).

Operation or physical control of an auto may be established by circumstantial evidence. *State v. Orasco*, 199 Neb. 532, 260 N.W.2d 303 (1977).

Word operate as used in this section relates to actual physical handling of controls of a motor vehicle. *State v. Dubany*, 184 Neb. 337, 167 N.W.2d 556 (1969).

As used in this section, the word operate relates to the actual physical handling of the controls of an automobile. *Waite v. State*, 169 Neb. 113, 98 N.W.2d 688 (1959).

#### 7. Miscellaneous

The “current violation” referred to in section 60-6,197.03(8) may be either a violation of this section or a violation of the refusal statute, section 60-197. *State v. Wagner*, 295 Neb. 132, 888 N.W.2d 357 (2016).

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

The offense of driving under the influence in violation of this section is a lesser-included offense of driving under the influence causing serious bodily injury in violation of section 60-6,198. *State v. Dragoo*, 277 Neb. 858, 765 N.W.2d 666 (2009).

A sentence of probation is excessively lenient when record shows a history of alcohol-related motor vehicle offenses spanning more than 30 years, an extreme alcohol addiction, and a lack of respect for court orders. *State v. Rice*, 269 Neb. 717, 695 N.W.2d 418 (2005).

The Omaha Municipal Code conflicts with this section. *State v. Loyd*, 265 Neb. 232, 655 N.W.2d 703 (2003).

Driving under the influence of alcoholic liquor or drugs is criminalized under this section, and the fact that a defendant has previously been convicted of such offense is irrelevant to the guilt or innocence of the defendant and is relevant only to the defendant’s sentence. *State v. Neiss*, 260 Neb. 691, 619 N.W.2d 222 (2000).

This section is a criminal driving under the influence of alcohol statute and is not part of the statutory scheme for an administrative license revocation. *Kalisek v. Abramson*, 257 Neb. 517, 599 N.W.2d 834 (1999).

A half-hour delay in videotaping a licensee suspected of drunk driving was not unreasonable, and the videotape was probative of the driver’s condition regarding whether a violation of this section had occurred, such delay going to the weight and not

the admissibility of the videotape. A violation of this section is but one offense, which can be proved in different ways. *State v. Dake*, 247 Neb. 579, 529 N.W.2d 46 (1995).

A defendant charged with driving under the influence, pursuant to this section, has only a statutory right to a jury trial, pursuant to section 24-536 (transferred to section 25-2705), for which proper demand is required. *State v. Bishop*, 224 Neb. 522, 399 N.W.2d 271 (1987).

A jury need only be unanimous in its conclusion that the defendant violated the law by committing the act and need not be unanimous as to which of several consistent theories it believes resulted in the violation. *State v. Parker*, 221 Neb. 570, 379 N.W.2d 259 (1986).

Conviction upon charge of refusal to submit to a chemical test under section 39-669.08 (transferred to section 60-6,197) did not operate to bar defendant’s trial upon charge under this section. *State v. Stabler*, 209 Neb. 298, 306 N.W.2d 925 (1981).

A defendant charged under this section is entitled to a jury trial as provided under section 24-536, R.R.S. 1943 (transferred to section 25-2705). *State v. Karel*, 204 Neb. 573, 284 N.W.2d 12 (1979).

It was harmless error, if any, for court to accept defendant’s written, all inclusive “Petition to Enter Plea of Guilty” without orally informing him he was waiving a trial by jury. *State v. Cooper*, 196 Neb. 728, 246 N.W.2d 65 (1976).

This section is *pari materia* with section 39-727.03 (transferred to section 60-6,197) and other sections mentioned in opinion. *Stevenson v. Sullivan*, 190 Neb. 295, 207 N.W.2d 680 (1973).

Under facts in this case, sentence to three years imprisonment was not excessive. *State v. Klinkacek*, 190 Neb. 293, 207 N.W.2d 524 (1973).

Operation of motor vehicle while under the influence of intoxicating liquor is a criminal offense. *State v. Berg*, 177 Neb. 419, 129 N.W.2d 117 (1964).

It is unlawful to operate or be in the actual physical control of any motor vehicle while under the influence of intoxicating liquor. *State v. Fox*, 177 Neb. 238, 128 N.W.2d 576 (1964).

Testimony to support conviction may come from a nonexpert witness. *State v. Lewis*, 177 Neb. 173, 128 N.W.2d 610 (1964).

Operation of motor vehicle while under the influence of intoxicating liquor is a punishable offense. *State v. Amick*, 173 Neb. 770, 114 N.W.2d 893 (1962).

Instruction given by trial court defining the term under the influence of alcoholic liquor was not erroneous. *Langford v. Ritz Taxicab Co.*, 172 Neb. 153, 109 N.W.2d 120 (1961).

Instruction defining the meaning of statutory terms was not erroneous. *Shanahan v. State*, 162 Neb. 676, 77 N.W.2d 234 (1956).

Jury trial for violation of this section could be waived. *Peterson v. State*, 157 Neb. 618, 61 N.W.2d 263 (1953).

Complaint was not defective because words intoxicating liquor were used instead of words alcoholic liquor. *Franz v. State*, 156 Neb. 587, 57 N.W.2d 139 (1953).

Driver’s license revoked for one year upon plea of guilty, and plea not set aside upon claim of defendant that she was not advised of her constitutional rights. *Kissinger v. State*, 147 Neb. 983, 25 N.W.2d 829 (1957).

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).

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).

For a prior conviction based on a plea of guilty to be used for enhancement purposes in an action under this section, the record must show that the defendant entered the guilty plea to

the charge. *State v. Schulte*, 12 Neb. App. 924, 687 N.W.2d 411 (2004).

For purposes of this section, substitution of "revocation" with "suspension" has no prejudicial effect. *State v. Mulinix*, 12 Neb. App. 836, 687 N.W.2d 1 (2004).

Alcohol-related violations of this section may be proved either by establishing that one was in actual physical control of a motor vehicle while under the influence or by establishing that one was in actual physical control of a motor vehicle while having more than the prohibited amount of alcohol in his or her body. *State v. Robinson*, 10 Neb. App. 848, 639 N.W.2d 432 (2002).

### **60-6,196.01 Driving under influence of alcoholic liquor or drug; additional penalty.**

In addition to any other penalty provided for operating a motor vehicle in violation of section 60-6,196, if a person has a prior conviction as defined in section 60-6,197.02 for a violation punishable as a felony under section 60-6,197.03 and is subsequently found to have operated or been in the actual physical control of any motor vehicle when such person has (1) a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (2) a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class IIIA misdemeanor.

**Source:** Laws 2011, LB675, § 7.

### **60-6,197 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; advisement; effect; violation; penalty.**

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196.

(3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and upon conviction be punished as provided in sections 60-6,197.02 to 60-6,197.08. Any person who

refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

(4) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (3) of this section and sections 60-498.01 to 60-498.04 upon return.

(5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged. Failure to provide such advisement shall not affect the admissibility of the chemical test result in any legal proceedings. However, failure to provide such advisement shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.

(6) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

**Source:** Laws 1959, c. 168, § 1, p. 613; Laws 1961, c. 187, § 2, p. 577; Laws 1963, c. 229, § 1, p. 716; Laws 1971, LB 948, § 2; Laws 1972, LB 1095, § 2; R.S.Supp.,1972, § 39-727.03; Laws 1982, LB 568, § 6; Laws 1986, LB 153, § 4; Laws 1987, LB 404, § 2; Laws 1987, LB 224, § 1; Laws 1988, LB 377, § 2; Laws 1990, LB 799, § 2; Laws 1992, LB 872, § 1; Laws 1992, LB 291, § 5; R.S.Supp.,1992, § 39-669.08; Laws 1993, LB 370, § 293; Laws 1993, LB 564, § 8; Laws 1996, LB 939, § 2; Laws 1998, LB 309, § 14; Laws 1999, LB 585, § 6; Laws 2000, LB 1004, § 2; Laws 2001, LB 38, § 48; Laws 2001, LB 773, § 16; Laws 2003, LB 209, § 12; Laws 2004, LB 208, § 11; Laws 2011, LB667, § 33.

#### Cross References

**Applicability of statute to private property**, see section 60-6,108.

**Conviction of felony involving use of motor vehicle**, transmittal of abstract, see section 60-497.02.

**Ineligibility for pretrial diversion**, see section 29-3604.

**Operator's license**, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

**Violation of ordinance**, prosecuting attorney, consult victim, see section 29-120.

1. General
2. Constitutionality
3. Effectiveness of implied consent
4. Test permitted
5. Advisement
6. Refusal
7. Miscellaneous

**1. General**

Any person who operates a motor vehicle in Nebraska is deemed to have given consent to submit to chemical tests for the purpose of determining the concentration of alcohol in the blood, breath, or urine. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

This section, by its terms, applies to situations where there is no actual consent. *State v. Seager*, 178 Neb. 51, 131 N.W.2d 676 (1964).

This section sets forth the implied consent rule. *State v. Fox*, 177 Neb. 238, 128 N.W.2d 576 (1964).

Any person who operates a motor vehicle upon a public highway thereby gives consent to chemical test of blood or urine. *Prucha v. Department of Motor Vehicles*, 172 Neb. 415, 110 N.W.2d 75 (1961).

**2. Constitutionality**

This section is facially constitutional, because there are circumstances under which a conviction for refusal under this section would be valid, such as when law enforcement has obtained a warrant to conduct a blood draw or if exigent circumstances exist such that there is no time to secure a warrant. *State v. Hood*, 301 Neb. 207, 917 N.W.2d 880 (2018).

Under *Birchfield v. North Dakota*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), this section is not unconstitutional on its face, but it was unconstitutional as applied to defendant's conviction for refusing to submit to a warrantless chemical blood test, where the U.S. Supreme Court had expressly declared the exception for a warrantless search incident to a lawful arrest for drunk driving to be unconstitutional in regard to a blood test and where there were no exigent circumstances justifying the warrantless blood test. *State v. McCumber*, 295 Neb. 941, 893 N.W.2d 411 (2017).

A court may not rely solely on the existence of an implied consent statute to conclude that consent to a blood test was given for Fourth Amendment purposes, and the determination of whether consent was voluntarily given requires a court to consider the totality of the circumstances. *State v. Modlin*, 291 Neb. 660, 867 N.W.2d 609 (2015).

The giving of a sample under this section does not involve a question of involuntariness, want of due process, or self incrimination. *State v. Turner*, 263 Neb. 896, 644 N.W.2d 147 (2002).

Under subsections (3) and (4) of this section, evidence obtained from a driver by testing body fluids in the implied consent context is not testimonial or communicative in nature and does not fall within the constitutional right against self-incrimination. *State v. Green*, 229 Neb. 493, 427 N.W.2d 304 (1988).

In the absence of a valid authorizing statute, the results of a test of blood for alcoholic content are inadmissible where the blood sample is taken involuntarily and requirements of the Fourth Amendment to the United States Constitution have not been satisfied. *State v. Howard*, 193 Neb. 45, 225 N.W.2d 391 (1975).

Implied Consent Law as amended in 1971 does not involve compulsion within Fifth Amendment; is constitutional; and penalties are as provided in section 39-727 (transferred to section 60-6,196). *State v. Manley*, 189 Neb. 415, 202 N.W.2d 831 (1972).

Implied Consent Law held constitutional. *State v. Williams*, 189 Neb. 127, 201 N.W.2d 241 (1972).

The revocation of a motorist's license to operate a motor vehicle for his refusal to take test under this section on the ground that he has been denied the services of legal counsel is not a deprivation of a constitutional right. *Rusho v. Johns*, 186 Neb. 131, 181 N.W.2d 448 (1970).

Drawing of blood sample by physician who had been directed to act as coroner's physician from body of fatally injured passenger in automobile did not violate prohibition against unreasonable searches and seizures, and result of tests performed by competent chemist using accepted procedures and facilities

were admissible. *Gardner v. Meyers*, 491 F.2d 1184 (8th Cir. 1974).

**3. Effectiveness of implied consent**

For implied consent to be effective, person from whom blood sample is taken must have been arrested or taken into custody before test is given. *State v. Baker*, 184 Neb. 724, 171 N.W.2d 798 (1969).

For implied consent to be effective, person must have been arrested or taken into custody before the test may be demanded. *Prigge v. Johns*, 184 Neb. 103, 165 N.W.2d 559 (1969).

For implied consent to be effective, person from whom blood sample is taken must have been arrested or taken into custody before test is given. *Otte v. State*, 172 Neb. 110, 108 N.W.2d 737 (1961).

**4. Test permitted**

Any person arrested for suspicion of driving under the influence of alcohol may be directed by an officer to submit to a chemical test to determine the concentration of alcohol in that person's body. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

An officer can require a driver to submit to a preliminary breath test without proof of intoxication if the officer has reasonable grounds to believe that such person has committed a moving traffic violation and/or has been involved in a traffic accident. *State v. Lowrey*, 239 Neb. 343, 476 N.W.2d 540 (1991).

It is established that as a condition precedent to a valid request by an officer to submit to a chemical test under the implied consent law, the arresting officer must have "reasonable grounds" to believe that the licensee was either driving a motor vehicle or in actual physical control of same while under the influence of intoxicating liquor. *Larson v. Jensen*, 228 Neb. 799, 424 N.W.2d 352 (1988).

Deputy had reasonable grounds to request that defendant submit to a chemical test of his blood, breath, or urine where the defendant was observed under circumstances from which the trier of fact could find beyond a reasonable doubt that the defendant had driven while under the influence of alcoholic liquor, in violation of section 39-669.07 (transferred to section 60-6,196). *State v. Baker*, 224 Neb. 130, 395 N.W.2d 766 (1986).

Reasonable grounds for arrest and arrest are conditions precedent to a valid request to submit to a chemical test. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

A condition precedent to a valid request by an officer to submit to a chemical test is that the officer must have reasonable grounds to believe that the licensee was either driving a motor vehicle or in the actual physical control of same while under the influence of alcoholic liquor. *Emmons v. Jensen*, 221 Neb. 444, 378 N.W.2d 147 (1985).

**5. Advisement**

Under subsection (5) (formerly subsection (10) of this section), a person arrested for driving under the influence must be advised that refusal to submit to a chemical test is a separate crime for which the person may be charged, but he or she need not be advised of any additional consequences of a refusal to submit to a chemical test. *State v. Turner*, 263 Neb. 896, 644 N.W.2d 147 (2002).

Pursuant to subsection (5) (formerly subsection (10) of this section), substantial compliance with the statute will suffice under certain circumstances. *State v. Roucka*, 253 Neb. 885, 573 N.W.2d 417 (1998).

Pursuant to subsection (10) of this section (60-6,197 (Reissue 1993)), a driver-arrestee who is required to submit to a chemical blood, breath, or urine test under this section should be advised of the natural and direct legal consequence of submitting to a chemical test. Such consequences include that any incriminating results from such a test may be used against the person in a

criminal proceeding. *State v. Christner*, 251 Neb. 549, 557 N.W.2d 707 (1997).

A sensible reading of subsection (10) of this section (60-6,197 (Reissue 1993)) indicates that the Legislature intended drivers to be advised of the natural and direct legal consequences flowing from submitting to a chemical blood, breath, or urine test and failing it. *State v. Emrich*, 251 Neb. 540, 557 N.W.2d 674 (1997).

Advisory form under subsection (10) of this section (60-6,197 (Reissue 1993)) must fully advise a motorist of the consequences of both refusing to submit to a chemical breath test and of submitting to and failing such test, and the failure of the advisory form to do so is plain error. *Perrine v. State*, 249 Neb. 518, 544 N.W.2d 364 (1996).

Pursuant to subsection (10) of this section (60-6,197 (Reissue 1993)), advisory form signed by motorist which failed to mention consequences fails to meet the advisory requirements set forth in this section. *Biddlecome v. Conrad*, 249 Neb. 282, 543 N.W.2d 170 (1996).

Subsection (10) of this section (60-6,197 (Reissue 1993)) requires an arresting officer to advise the arrestee of the natural and direct legal consequences of refusing to submit to the chemical test or taking the test and failing it. *Smith v. State*, 248 Neb. 360, 535 N.W.2d 694 (1995).

One cannot evade the effect of this section simply by repeatedly screaming, while the implied consent form is read to him or her, that he or she does not understand. For purposes of enhancement, a knowing and intelligent waiver of counsel may not be inferred from a defendant's pro se appearance at trial in a prior conviction. At a minimum, a sufficiently complete checklist or other docket entry may be used to establish a valid waiver of counsel as to prior convictions for enhancement purposes. *State v. Green*, 238 Neb. 328, 470 N.W.2d 736 (1991).

There is no requirement that Miranda warnings be given prior to a request to submit to a chemical analysis of blood, breath, or urine under the Nebraska implied consent law. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

Without an implied consent advisement a motorist cannot be cited for a refusal. *Jamros v. Jensen*, 221 Neb. 426, 377 N.W.2d 119 (1985).

It was not necessary to again advise a person of the consequences of refusing to submit to a test after he had been admonished and refused to submit. *State v. Twiss*, 192 Neb. 402, 222 N.W.2d 108 (1974).

## 6. Refusal

Evidence of a driver's refusal to submit to a warrantless blood draw is admissible in a prosecution for driving under the influence of alcohol. *State v. Hood*, 301 Neb. 207, 917 N.W.2d 880 (2018).

An arrested motorist refuses to submit to a chemical test when the motorist's conduct, demonstrated under the circumstances confronting the officer requesting the chemical test, justifies a reasonable person's belief that the motorist understood the officer's request for a test and manifested a refusal or unwillingness to submit to the requested test. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

A refusal to submit to a chemical test occurs within the meaning of subsection (4) of this section when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood that he was being asked to submit to a test and manifested an unwillingness to take it. *State v. Beerbohm*, 229 Neb. 439, 427 N.W.2d 75 (1988).

The choice of whether one's blood or urine shall be tested for determination of alcohol content belongs to the licensee; a licensee who, upon the request of a law enforcement officer to do so, refuses to specify which fluid he or she will produce for such testing has refused to submit to a chemical test in violation of subsection (4) of this section. *State v. Beerbohm*, 229 Neb. 439, 427 N.W.2d 75 (1988).

A person is not exempted from the provisions of the refusal statute merely because he was too intoxicated to take the test. *State v. Medina*, 227 Neb. 736, 419 N.W.2d 864 (1988).

Anything less than an unqualified, unequivocal assent to an officer's request to submit to a chemical test constitutes a refusal. *State v. Medina*, 227 Neb. 736, 419 N.W.2d 864 (1988); *Clontz v. Jensen*, 227 Neb. 191, 416 N.W.2d 577 (1987).

A refusal to submit to a chemical test occurs within the meaning of the implied consent law when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood he was being asked to submit to a test and manifested an unwillingness to take it. *Pollard v. Jensen*, 222 Neb. 521, 384 N.W.2d 640 (1986).

Justifiable refusal to take a body fluids test depends on some illegal or unreasonable aspect of the request to submit, the test itself, or both. A conditional refusal is a refusal under Nebraska's implied consent law. A motor vehicle driver is not entitled to consult a lawyer before submitting to a body fluids test because the suspension of a driver's license which results from refusal is a remedial, not strictly punitive, measure. *Bapat v. Jensen*, 220 Neb. 763, 371 N.W.2d 742 (1985).

An operator has refused to submit to a test when he conducts himself in a way which would justify a reasonable person in believing that he understood he had been asked to take the test and manifested an unwillingness to take it. *Bauer v. Peterson*, 212 Neb. 174, 322 N.W.2d 389 (1982).

Single request for chemical test is sufficient, but more than one request may be permissible, and request need not be made at scene of arrest. *Stender v. Sullivan*, 196 Neb. 810, 246 N.W.2d 643 (1976).

Refusal of request to contact attorney affords no reasonable ground for refusing to take alcoholic test. *Stevenson v. Sullivan*, 190 Neb. 295, 207 N.W.2d 680 (1973).

A conditional or qualified refusal to take the test is a refusal to submit to the test within the meaning of the act. *State v. Eckert*, 186 Neb. 134, 181 N.W.2d 264 (1970).

Section does not sanction qualified or conditional consent; such a consent is in fact a refusal. *Preston v. Johns*, 186 Neb. 14, 180 N.W.2d 135 (1970).

## 7. Miscellaneous

The "current violation" referred to in section 60-6,197.03(8) may be either a violation of the driving under the influence statute, section 60-6,196, or a violation of this section. *State v. Wagner*, 295 Neb. 132, 888 N.W.2d 357 (2016).

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle in violation of section 60-6,196 or this section, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

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).

The sworn report of the arresting officer must indicate (1) that the person was arrested as described in subsection (2) of this section and the reasons for the arrest, (2) that the person was requested to submit to the required test, and (3) that the person refused to submit to the required test. *Nothnagel v. Neth*, 276 Neb. 95, 752 N.W.2d 149 (2008).

The preliminary test referred to in section 60-6,197.04 (formerly subsection (3) of section 60-6,197) is a different procedure and not a chemical test that will satisfy requirements for a conviction under subsection (3) (formerly subsection (4) of this section). *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997).

A sentencing court, as part of its judgment of conviction under the implied consent law, in addition to ordering the convicted person not to drive any vehicle in the state for any purpose for 6 months, shall order that the operator's license of such person be revoked for a like period. The proscription that there can be no revocation of one's driver's license and operating privileges if the refusal to submit to a chemical test is reasonable under the circumstances contained in section 39-669.16 (transferred to section 60-498.02), relates only to administrative license revocations by the Director of Motor Vehicles. In a criminal proceeding, however, the inquiry centers on the existence of reasonable grounds for the arresting officer to believe that an operator was driving while under the influence of alcohol. *State v. Boyd*, 242 Neb. 144, 493 N.W.2d 344 (1992).

Subsection (4)(a) of this section and section 39-669.07(b) (transferred to section 60-6,196) require that the relevant periods of revocation of one's operator's license not run concurrently with any jail term imposed. Revocation of one's operator's license for a period of 180 days does not fulfill the requirement of subsection (4)(a) of this section that revocation be for a period of 6 months. *State v. Contreras*, 236 Neb. 455, 461 N.W.2d 562 (1990).

Where the elements of a crime defined by statute are set out in an information or complaint, it is sufficient; and if words appear in such information or complaint which might be stricken, leaving a crime sufficiently charged, and such words do not tend to negative any of the essential averments, they may be treated as surplusage and be entirely rejected. *State v. Blankenfeld*, 229 Neb. 411, 427 N.W.2d 65 (1988).

Officer had reasonable grounds to believe defendant was under influence of alcohol when operating or in control of vehicle. *Porter v. Jensen*, 223 Neb. 438, 390 N.W.2d 511 (1986).

It is no defense that a licensee asked to submit to a chemical test under the implied consent law does not understand the consequences of refusal or is not able to make a reasoned judgment as to what course of action to take. *Pollard v. Jensen*, 222 Neb. 521, 384 N.W.2d 640 (1986).

Where no issue as to the propriety of an arrest is raised and the evidence of the preliminary breath test is relevant only for the limited purpose of establishing probable cause to require a driver to submit to a test of his blood, urine, or breath, the admissibility of the preliminary breath test is a matter of law and should therefore be admitted into evidence out of the presence of the jury. *State v. Klingelhofer*, 222 Neb. 219, 382 N.W.2d 366 (1986).

A driver is not entitled to consult with an attorney before submitting to a chemical test under the implied consent law, nor is a delay in the test required due to a driver's request to consult with an attorney. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

A delay in chemical testing is nonprejudicial unless it materially affects the results of the test. *Jamros v. Jensen*, 221 Neb. 426, 377 N.W.2d 119 (1985).

Under the Nebraska Implied Consent Law, an officer may provide more than one opportunity to acquire a sufficient breath sample, even though only one chance is necessary. *Raymond v. Department of Motor Vehicles*, 219 Neb. 821, 366 N.W.2d 758 (1985).

The trial court must advise a defendant charged with refusal to submit to a chemical test of the penalties for first, second, or third offense. However, when the defendant was charged with, advised of the penalty for, and convicted of first offense refusal, the failure to advise him of the penalties for repeat offenses was not error. *State v. Tichota*, 218 Neb. 444, 356 N.W.2d 85 (1984).

Only tests taken pursuant to class A or B permits are such a chemical test as to comport with the requirement of subsection (1) of this section and a chemical analysis as to comport with section 39-669.07 (transferred to section 60-6,196). The preliminary test referred to in subsection (3) of this section is a different procedure and not such a chemical test or chemical analysis as to satisfy requirements for a conviction under section

39-669.07 (transferred to section 60-6,196). *State v. Green*, 217 Neb. 70, 348 N.W.2d 429 (1984).

Conviction under this section did not operate to bar trial upon charge under section 39-669.07 (transferred to section 60-6,196), driving while intoxicated. *State v. Stabler*, 209 Neb. 298, 306 N.W.2d 925 (1981).

The results of a test made under the provisions of section 39-669.08 (transferred to section 60-6,197) may be received in evidence only if the requirements of section 39-669.11 (transferred to section 60-6,201) are met. In order to show that the requirements have been met it is necessary to show that the method of performing the test was approved by the Nebraska Department of Health and that the person administering the test was qualified and had a valid license from the Department of Health. *State v. Gerber*, 206 Neb. 75, 291 N.W.2d 403 (1980).

Offering of a preliminary breath test under section 39-669.08 (3) (transferred to section 60-6,197) herein, is not a condition precedent to an arrest under this section. *State v. Orosco*, 199 Neb. 532, 260 N.W.2d 303 (1977).

Accused waives his right to choose the type of test by voluntarily taking either the blood or urine test. *State v. Wahrman*, 199 Neb. 337, 258 N.W.2d 818 (1977).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. *Mackey v. Director of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

Procedural due process in connection with hearing as to reasonableness of refusal to submit to test was not violated by fact the notice thereof specified the director's office as the place of hearing but the hearing was held in a different room in the same building and party was advised of the change when he appeared in the director's office. *Atkins v. Department of Motor Vehicles*, 192 Neb. 791, 224 N.W.2d 535 (1974).

Emotional upset due to pending divorce was not good reason for actions indicating intoxication and for refusal to submit to chemical test of body fluids. *Duffack v. Kissack*, 192 Neb. 634, 223 N.W.2d 484 (1974).

Refusal to submit to test may be shown in prosecution for driving while under influence of intoxicating liquor. *State v. Meints*, 189 Neb. 264, 202 N.W.2d 202 (1972).

A qualified or conditional consent is not sanctioned nor is a dissent on ground party has taken medicine and doesn't know what effect it will have. *Doran v. Johns*, 186 Neb. 321, 182 N.W.2d 900 (1971).

Officer had reason to arrest person who was driving under influence of intoxicating liquor. *Metschke v. Department of Motor Vehicles*, 186 Neb. 197, 181 N.W.2d 843 (1970).

Plea of guilty under this section does not establish reasonableness of a refusal to submit to a chemical test under Implied Consent Act. *Ziembra v. Johns*, 183 Neb. 644, 163 N.W.2d 780 (1968).

Conviction of driving while under the influence of intoxicating liquor sustained. *State v. Oleson*, 180 Neb. 546, 143 N.W.2d 917 (1966).

Test under this section is not required to be delayed at request of arrested motorist until he be permitted to contact legal counsel. *State v. Oleson*, 180 Neb. 546, 143 N.W.2d 917 (1966).

Sentence imposed was within the limits prescribed by this section. *State v. Koziol*, 177 Neb. 648, 130 N.W.2d 557 (1964).

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).

“Chemical test or tests” may refer to a test conducted with chemicals. However, the term also encompasses a test that determines the chemical composition of a person’s blood,

breath, or urine. *State v. Crabtree*, 3 Neb. App. 363, 526 N.W.2d 688 (1995).

Subsection (2) of this section, previously codified at subsection (2) of section 39-669.08, does not require and section 60-6,204, previously codified at section 39-669.14, was interpreted as not requiring a valid preliminary breath test as a prerequisite to chemical testing of a person arrested for driving under the influence. In this section, “chemical test,” as previously codified at section 39-669.08, was interpreted to be a test to determine the body fluid levels of a certain chemical, as well as a test utilizing chemicals. *State v. Cash*, 3 Neb. App. 319, 526 N.W.2d 447 (1995).

**60-6,197.01 Driving while license has been revoked; driving under influence of alcoholic liquor or drug; second and subsequent violations; restrictions on motor vehicles; additional restrictions authorized.**

(1) Upon conviction for a violation described in section 60-6,197.06 or a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions:

(a)(i) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner’s expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this subdivision at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this subdivision, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(ii)(A) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant’s dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

(B) A registered owner who executes an affidavit pursuant to subdivision (1)(a)(ii)(A) of this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a Class IV misdemeanor and may not file any additional affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

(C) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1)(a) of this section; or

(b) As an alternative to subdivision (1)(a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each motor vehicle owned or operated by the convicted person if he or she was sentenced to an operator's license revocation of at least one year. If the person's operator's license has been revoked for at least a one-year period, after a minimum of a forty-five-day no driving period, the person may operate a motor vehicle with an ignition interlock permit and an ignition interlock device pursuant to this subdivision and shall retain the ignition interlock permit and ignition interlock device for not less than a one-year period or the period of revocation ordered by the court, whichever is longer. No ignition interlock permit may be issued until sufficient evidence is presented to the department that an ignition interlock device is installed on each vehicle and that the applicant is eligible for use of an ignition interlock device. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court.

(2) In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be ordered for a person convicted of a second or subsequent violation unless the installation of an ignition interlock device is also required.

**Source:** Laws 1999, LB 585, § 7; Laws 2001, LB 38, § 49; Laws 2006, LB 925, § 10; Laws 2008, LB736, § 7; Laws 2009, LB497, § 5; Laws 2010, LB924, § 3; Laws 2013, LB158, § 3.

**60-6,197.02 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.**

(1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in sections 60-6,196.01 and 60-6,197.03. For purposes of sentencing under sections 60-6,196.01 and 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the fifteen-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section

28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(b) Prior conviction includes any conviction under subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Fifteen-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last fifteen years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 60-6,196 or 60-6,197 before January 1, 2012, but sentenced pursuant to section 60-6,197.03 for such violation on or after January 1, 2012, shall be sentenced according to the provisions of section 60-6,197.03 in effect on the date of arrest.

**Source:** Laws 2004, LB 208, § 12; Laws 2005, LB 594, § 2; Laws 2009, LB497, § 6; Laws 2011, LB667, § 34; Laws 2011, LB675, § 8.

1. Enhancement
2. Offense
3. Sufficiency of the evidence
4. Miscellaneous

**1. Enhancement**

“Conviction” means a finding of guilt by a jury or a judge, or a judge’s acceptance of a plea of guilty or no contest. *State v. Gilliam*, 292 Neb. 770, 874 N.W.2d 48 (2016).

For the purpose of sentence enhancement, a suspended imposition of a sentence from Missouri qualified as a “prior conviction” where the Missouri judgment indicated that the defendant pled guilty to driving while intoxicated in a Missouri court and the judge accepted the plea. *State v. Gilliam*, 292 Neb. 770, 874 N.W.2d 48 (2016).

The plain and ordinary meaning of this section does not require the State to prove the exact date of the prior offense. *State v. Taylor*, 286 Neb. 966, 840 N.W.2d 526 (2013).

A defendant’s conviction in Colorado for driving while ability impaired could not be used to enhance his conviction in Nebraska for driving under the influence. *State v. Mitchell*, 285 Neb. 88, 825 N.W.2d 429 (2013).

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

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

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

This section (formerly subsection (2) of section 60-6,196) authorizes a trial court to consider prior convictions of a defendant for driving under the influence of alcoholic liquor or drug within the 12 years prior to the offense for which a defendant currently stands trial and is not ex post facto as to a conviction prior to its passage, since an offender subject to enhancement of punishment under this statute is not receiving additional punishment for his or her previous convictions but is being penalized for an offense committed after its passage. This section deals with offenses committed after its passage, permits an inquiry into a defendant’s previous convictions, and in fixing the penalty, does not punish the defendant for previous offenses but for persistence in violating this section. *State v. Hansen*, 258 Neb. 752, 605 N.W.2d 461 (2000).

The language of this section permits a defendant to challenge the validity of a prior driving under the influence conviction offered for purposes of enhancement on the ground that it was obtained in violation of the defendant’s Sixth Amendment right to counsel. *State v. Louthan*, 257 Neb. 174, 595 N.W.2d 917 (1999).

Subsection (3) of this section does not provide that mitigating facts presented by the defendant would be considered by the court in determining whether otherwise valid prior convictions should be used to enhance a defendant’s sentence. *State v. Brooks*, 22 Neb. App. 598, 858 N.W.2d 267 (2014).

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

Legislative amendments to the length of the cleansing period provided by this section will not implicate vested due process rights of individuals with prior convictions used for enhancement. *State v. Grant*, 9 Neb. App. 919, 623 N.W.2d 337 (2001).

Prior driving under the influence convictions are not necessary elements of a subsequent driving under the influence charge, but, rather, are used to determine the sentence to be imposed for a later driving under the influence conviction. Thus, the district court did not violate the Double Jeopardy Clause when it remanded a conviction for second-offense driving under the influence to the county court with directions to enter a judgment finding the defendant guilty of third-offense driving under the influence and to sentence her accordingly. *State v. Werner*, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

**2. Offense**

In a prosecution under this section (formerly subsection (6) of section 60-6,196) for driving when one’s operator’s license has been revoked pursuant to subdivision (2)(c) of this section, proof of the prior conviction under subdivision (2)(c) is an essential element of the offense, and thus, the State has the burden to prove the prior conviction. A prior third-offense drunk driving conviction may be used as an element of a violation under this section (formerly subsection (6) of section 60-6,196) even though the prior conviction is not subject to a collateral attack. *State v. Lee*, 251 Neb. 661, 558 N.W.2d 571 (1997).

This section is a continuance and affirmation of the previous section 39-669.07. Convictions under section 39-669.07 can be used for the purpose of sentence enhancements under this section. *State v. Sundling*, 248 Neb. 732, 538 N.W.2d 749 (1995).

**3. Sufficiency of the evidence**

Subsection (c) of this section (formerly section 39-669.07 (Reissue 1988)) limits the proof which can be used to establish the defendant’s prior driving while under the influence convictions. *State v. Jensen*, 236 Neb. 869, 464 N.W.2d 326 (1991).

**4. Miscellaneous**

The time limitations for the use of prior driving under the influence convictions set forth in this section do not apply to the use of prior driving under the influence convictions to section 28-306. *State v. Tlamka*, 7 Neb. App. 579, 585 N.W.2d 101 (1998).

### **60-6,197.03 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.**

Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator’s license of such person be revoked for a period of six months from the

date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to section 60-6,211.05 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court shall order that during the period of revocation the person apply for an ignition interlock permit pursuant to section 60-6,211.05. Such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a five-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and have an ignition interlock device installed on any motor vehicle he or she owns or operates for at least one year. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's

license until he or she has had the ignition interlock device installed for the period ordered by the court. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, order payment of a one-thousand-dollar fine and revoke the operator's license of such person for a period of at least eighteen months but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final

judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least eighteen months but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period issued pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine, confinement in the city or county jail for sixty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section

60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for ninety days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIA felony, with a minimum sentence of one year of imprisonment, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred twenty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class IIA felony with a minimum sentence of two years' imprisonment, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders



shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony with a minimum sentence of two years' imprisonment and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days.

**Source:** Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4; Laws 2008, LB736, § 8; Laws 2009, LB497, § 7; Laws 2010, LB924, § 4; Laws 2011, LB667, § 35; Laws 2011, LB675, § 9; Laws 2013, LB158, § 4; Laws 2015, LB605, § 77; Laws 2016, LB1094, § 32.

1. Constitutionality
2. Elements
3. Impairment or under the influence
4. Enhancement

## 5. Miscellaneous

## 1. Constitutionality

Permanent license revocation upon the third conviction for drunk driving does not deprive a person of equal protection of the law, due process of law, or the right to travel, nor does it constitute cruel and unusual punishment. *State v. Michalski*, 221 Neb. 380, 377 N.W.2d 510 (1985).

A defendant is not entitled to a jury trial under provisions of Sixth Amendment to Constitution of the United States in trial for second offense drunk driving hereunder. *State v. Young*, 194 Neb. 544, 234 N.W.2d 196 (1975).

Imposition of greater penalty for subsequent offense is constitutional. *Poppe v. State*, 155 Neb. 527, 52 N.W.2d 422 (1952).

Legislative amendments to the length of the cleansing period provided by this section will not implicate vested due process rights of individuals with prior convictions used for enhancement. *State v. Grant*, 9 Neb. App. 919, 623 N.W.2d 337 (2001).

Prior driving under the influence convictions are not necessary elements of a subsequent driving under the influence charge, but, rather, are used to determine the sentence to be imposed for a later driving under the influence conviction. Thus, the district court did not violate the Double Jeopardy Clause when it remanded a conviction for second-offense driving under the influence to the county court with directions to enter a judgment finding the defendant guilty of third-offense driving under the influence and to sentence her accordingly. *State v. Werner*, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

## 2. Elements

This section is a continuance and affirmation of the previous section 39-669.07. Convictions under section 39-669.07 can be used for the purpose of sentence enhancements under this section. *State v. Sundling*, 248 Neb. 732, 538 N.W.2d 749 (1995).

Revocation for 15 years is not an element of the offense of driving with a revoked license under subsection (c) of former section. *State v. Reichstein*, 233 Neb. 715, 447 N.W.2d 635 (1989).

## 3. Impairment or under the influence

Subsection (c) of this section (formerly section 39-669.07 (Reissue 1988)) limits the proof which can be used to establish the defendant's prior driving while under the influence convictions. *State v. Jenson*, 236 Neb. 869, 464 N.W.2d 326 (1991).

Under this provision (formerly part of section 60-6,196), a defendant may object to the validity of a prior conviction for enhancement purposes where there is no showing that at the time of the previous conviction he was represented by counsel or knowingly and voluntarily waived the right to counsel. *State v. Fraser*, 222 Neb. 862, 387 N.W.2d 695 (1986).

## 4. Enhancement

The "current violation" referred to in subdivision (8) of this section may be either a violation of the driving under the influence statute, section 60-6,196, or a violation of the refusal statute, section 60-6,197. *State v. Wagner*, 295 Neb. 132, 888 N.W.2d 357 (2016).

The fact that subdivision (8) of this section is not limited to driving under the influence violations does not subject persons convicted of refusal violations to multiple punishments for the same offense on the grounds that it "double dips" the act of refusal as a material element of the underlying refusal offense and as a sentencing factor. *State v. Wagner*, 295 Neb. 132, 888 N.W.2d 357 (2016).

Under the enhancement provisions of this section (formerly subsection (2) of section 60-6,196), a drunk driving offender is not receiving additional punishment for his or her previous convictions, but, rather, the offender is being penalized for persisting in committing the offense of driving while under the influence of liquor. *State v. Neiss*, 260 Neb. 691, 619 N.W.2d 222 (2000).

This section (formerly subsection (2) of section 60-6,196) authorizes a trial court to consider prior convictions of a defendant for driving under the influence of alcoholic liquor or drug within the 12 years prior to the offense for which a defendant currently stands trial and is not *ex post facto* as to a conviction prior to its passage, since an offender subject to enhancement of punishment under this statute is not receiving additional punishment for his or her previous convictions but is being penalized for an offense committed after its passage. This section deals with offenses committed after its passage, permits an inquiry into a defendant's previous convictions, and in fixing the penalty, does not punish the defendant for previous offenses but for persistence in violating this section. *State v. Hansen*, 258 Neb. 752, 605 N.W.2d 461 (2000).

The language of this section permits a defendant to challenge the validity of a prior driving under the influence conviction offered for purposes of enhancement on the ground that it was obtained in violation of the defendant's Sixth Amendment right to counsel. *State v. Louthan*, 257 Neb. 174, 595 N.W.2d 917 (1999).

Pursuant to section 60-6,197.06 (formerly subsection (6) of section 60-6,196), the enhancement rules applicable to offenses committed under subdivision (3) of this section (formerly section 60-6,196(2)(c)) are not applicable to license revocation offenses committed under this section. *State v. Kennedy*, 251 Neb. 337, 557 N.W.2d 33 (1996).

Objections to prior convictions used for enhancement refers only to challenges based on a failure to show that in the prior proceeding defendant had counsel or voluntarily and intelligently waived his or her right to counsel. *State v. Wiltshire*, 241 Neb. 817, 491 N.W.2d 324 (1992).

In proceedings under subdivision (3) of this section (formerly subdivision (2)(c) of section 60-6,196) for multiple violations of this section, convictions rendered the same day, if imposed for separate offenses, may each constitute a prior conviction so as to warrant an enhanced penalty. For purposes of determining the 10-year period required by subdivision (2)(c) of this section, the time shall be computed from the date of the prior offense to that date of the offense which resulted in the current conviction. *State v. Towler*, 240 Neb. 103, 481 N.W.2d 151 (1992).

A previous conviction on appeal at the time the second offense is committed may not be considered a conviction for purposes of the punishment enhancement provisions of this section. *State v. Estes*, 238 Neb. 692, 472 N.W.2d 214 (1991).

This section (formerly part of section 60-6,196) requires only that a violator be properly convicted of two previous violations, whether the prior violation was called first or second offense. *State v. Donaldson*, 234 Neb. 683, 452 N.W.2d 531 (1990).

An erroneous designation in a complaint of the date on which and the county in which a prior conviction occurred will not preclude a defendant from being sentenced as one who has previously been convicted of driving while under the influence of alcohol, if the record discloses that the defendant could not have been misled or confused. *State v. Wakeman*, 231 Neb. 66, 434 N.W.2d 549 (1989).

For enhancement purposes under this section (formerly part of section 60-6,196), the sentencing court shall make a finding on the record concerning the number of defendant's prior convictions for drunk driving. *State v. Snodgrass*, 230 Neb. 119, 430 N.W.2d 55 (1988).

For a prior conviction based on a plea of guilty to be used for enhancement purposes in an action under this section (formerly part of section 60-6,196), the record must show that the defendant entered the guilty plea to the charge. *State v. Slezak*, 226 Neb. 404, 411 N.W.2d 632 (1987).

Checklist evidences defendant's waiver of counsel and satisfies State's burden in proving validity of conviction in an enhancement hearing. *State v. Thompson*, 224 Neb. 922, 402 N.W.2d 271 (1987).

The substantive offense is driving while under the influence of alcohol or with more than .10 percent of alcohol in one's body

fluid. The number of times a person has previously been convicted of such a charge is not itself a crime but, rather, is a factor which the trial court is to consider in imposing sentence. *State v. Jameson*, 224 Neb. 38, 395 N.W.2d 744 (1986).

A certified copy of a judgment entered on a prior conviction for drunk driving may be used for enhancement purposes. *State v. Hamblin*, 223 Neb. 469, 390 N.W.2d 533 (1986).

A defendant may not relitigate a former conviction in an enhancement proceeding. *State v. Fraser*, 222 Neb. 862, 387 N.W.2d 695 (1986).

Under this provision (formerly part of section 60-6,196), the trial court is required to advise the defendant of his right to review the record of the prior conviction, bring mitigating facts to the attention of the court prior to sentencing, and object to the validity of the prior conviction. *State v. Fraser*, 222 Neb. 862, 387 N.W.2d 695 (1986).

The state has the burden to show only that defendant had or waived counsel at prior proceedings used for enhancement purposes. *State v. Soe*, 219 Neb. 797, 366 N.W.2d 439 (1985).

A transcript of conviction which fails to show on its face that counsel was afforded or the right waived cannot be used for enhancement purposes. *State v. Baxter*, 218 Neb. 414, 355 N.W.2d 514 (1984).

Record of an enhancement proceeding for second or third offense driving while intoxicated must show that the requirements of the statute were met. A defendant may waive the rights provided by this statute with regard to prior convictions. *State v. Ziemba*, 216 Neb. 612, 346 N.W.2d 208 (1984).

In sentencing under this section (formerly part of section 60-6,196) the record of the trial court must show evidence of prior convictions and whether the defendant was represented by counsel or waived such representation in those prior proceedings. *State v. Prichard*, 215 Neb. 488, 339 N.W.2d 748 (1983).

Where under this section (formerly part of section 60-6,196), proof has been made of a defendant's conviction on a prior misdemeanor violation of that statute, the defendant cannot raise a collateral attack upon that conviction. *State v. Kelly*, 212 Neb. 45, 321 N.W.2d 80 (1982).

A defendant may not collaterally attack a prior conviction when proof of that prior conviction is offered in a proceeding on the issue of enhancement of sentence. *State v. Voight*, 206 Neb. 829, 295 N.W.2d 112 (1980).

Third offender need not have previously been punished as second offender, but must only have been twice previously convicted of driving under the influence. *State v. Orosco*, 199 Neb. 532, 260 N.W.2d 303 (1977).

Proof of prior convictions was properly made. *State v. Ninneman*, 179 Neb. 729, 140 N.W.2d 5 (1966).

Compliance with former sentence is not essential to proof of prior conviction. *Danielson v. State*, 155 Neb. 890, 54 N.W.2d 56 (1952).

Standard waiver forms, once signed by a defendant, are sufficient in an enhancement proceeding to meet the State's burden of proving that defendant knowingly, intelligently, and voluntarily waived his or her right to counsel. *State v. Werner*, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

The time limitations for the use of prior driving under the influence convictions set forth in this section do not apply to the use of prior driving under the influence convictions to section 28-306. *State v. Tlamka*, 7 Neb. App. 579, 585 N.W.2d 101 (1998).

Prior convictions of driving under the influence of alcohol under former section 39-669.07 or ordinances thereunder may properly be used to enhance convictions under this section (formerly part of section 60-6,196), as this section is a mere affirmation of the original act. *State v. Sundling*, 3 Neb. App. 722, 531 N.W.2d 7 (1995).

A defendant's allegation that the State failed to show that the defendant was present at an enhancement proceeding pursuant to a prior conviction under this section (formerly part of section 60-6,196) constituted a collateral attack, which could only be

raised in a separate proceeding. *State v. Jones*, 1 Neb. App. 816, 510 N.W.2d 404 (1993).

##### 5. Miscellaneous

The amendment by 2015 Neb. Laws, L.B. 605, removing the provision of section 29-2262 relating to jail time as a condition of probation for felony offenses did not implicitly repeal the provision in subsection (6) of this section that required 60 days in jail as a condition of probation. *State v. Thompson*, 294 Neb. 197, 881 N.W.2d 609 (2016).

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).

Under subdivision (3) of this section (formerly subdivision (2)(c) of section 60-6,196) a 15-year revocation is part of the overall punishment of a defendant, in conjunction with the fines and jail terms imposed for the offense under Class W misdemeanors. *State v. Bainbridge*, 249 Neb. 260, 543 N.W.2d 154 (1996).

Under subdivision (3) of this section (formerly subdivision (2)(c) of section 60-6,196) an order of probation for a person convicted of third-offense driving while under the influence of alcoholic liquor may include a provision not to operate a motor vehicle for any reason whatsoever during the entire term of probation. *State v. Seaman*, 237 Neb. 916, 468 N.W.2d 121 (1991).

The relevant portion of this section (formerly part of section 60-6,196) directs in clear, plain, simple, and unambiguous words that when one convicted of first-offense driving while intoxicated is placed on probation, he or she shall be ordered not to drive for any purpose for a period of 60 days from the date of the order of probation. *State v. Matthews*, 237 Neb. 300, 465 N.W.2d 763 (1991).

Revocation of one's operator's license for a period of 365 days will not always fulfill the requirement that revocation be for a period of 1 year. *State v. Contreras*, 236 Neb. 455, 461 N.W.2d 562 (1990).

Credit against statutory minimum sentence for inpatient treatment was erroneous, and it was within the district court's power to modify the judgment by striking the illegal credit. *State v. Oliver*, 230 Neb. 864, 434 N.W.2d 293 (1989).

In a case pending appeal when this section was amended, a sentence of lifetime suspension of a driver's license for driving while under the influence should be vacated and in lieu thereof a sentence of suspension for 15 years imposed. *State v. Painter*, 224 Neb. 905, 402 N.W.2d 677 (1987).

Where the record did not show the defendant knew the penalty for second offense DWI included a mandatory minimum confinement under subsection (2) (of former section 39-669.07) when he entered his plea, the cause was remanded to determine if the defendant had such knowledge in fact. *State v. Stastny*, 223 Neb. 903, 395 N.W.2d 492 (1986).

Upon revocation of probation, the court may impose such punishment as may have been imposed originally for the crime of which such defendant was convicted. Resultingly, defendant who was convicted of third offense driving while intoxicated in 1980 and who violated his probation in 1984 was subject to sentencing under the penal statute in effect at the time of his conviction. *State v. Jacobson*, 221 Neb. 639, 379 N.W.2d 772 (1986).

A defendant's operator's license may not be suspended beyond one year from the judgment of conviction; that is, in this case, one year from the date sentence of probation was imposed. *State v. Schulz*, 221 Neb. 473, 378 N.W.2d 165 (1985).

Under subsection (1) of this section (former section 39-669.07), the court-ordered suspending of driving privileges must be for a continuous period computed from the date the

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order of probation is entered. State v. Ramirez, 218 Neb. 899, 360 N.W.2d 484 (1984).

A trial court does not have the authority under this section to interrupt the period of suspension or permit one convicted of driving under the influence of alcoholic liquor or drug, first or second offense, to drive for limited work-related purposes. On second offense the period of prohibition against driving must be for a period of six continuous months computed from the date the order of probation is entered. State v. Havorka, 218 Neb. 367, 355 N.W.2d 343 (1984).

A sentence within the statutory maximum will not be disturbed on appeal absent an abuse of discretion. State v. Rosenberry, 209 Neb. 383, 307 N.W.2d 823 (1981).

A sentence validly imposed takes effect from the time it is imposed, and the subsequent order of the same court vacating

that sentence was a nullity. State v. Sliva, 208 Neb. 647, 305 N.W.2d 10 (1981).

Maximum sentence under this statute not excessive in view of defendant's record. State v. Phillips, 197 Neb. 343, 248 N.W.2d 773 (1977).

Sentence of imprisonment for one year and revocation of driver's license was not an abuse of discretion by the trial court. State v. Frans, 192 Neb. 641, 223 N.W.2d 490 (1974).

A requirement that one convicted of driving while intoxicated attend and complete and pay for an alcohol abuse course is a valid condition of probation. State v. Muggins, 192 Neb. 415, 222 N.W.2d 289 (1974).

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).

**60-6,197.04 Driving under influence of alcoholic liquor or drugs; preliminary breath test; refusal; penalty.**

Any peace officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his or her actual physical control a motor vehicle in this state to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 60-6,196 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

**Source:** Laws 2004, LB 208, § 14.

This section is constitutionally valid, facially and as applied to the defendant, and does not conflict with the 4th, 5th, and 14th Amendments to the U.S. Constitution, and Neb. Const. Art. I, secs. 7 and 12, as this section mandates a preliminary breath test, rather than a search incident to lawful arrest addressed in *Birchfield v. North Dakota*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), and where the arresting officer cited specific articulable facts to support administering the preliminary breath test. State v. McCumber, 295 Neb. 941, 893 N.W.2d 411 (2017).

The preliminary test referred to in this section (formerly subsection (3) of section 60-6,197) is a different procedure and not a chemical test that will satisfy requirements for a conviction under subsection (3) (formerly subsection (4) of section 60-6,197). State v. Howard, 253 Neb. 523, 571 N.W.2d 308 (1997).

**60-6,197.05 Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.**

Any period of revocation imposed by the court for a violation of section 60-6,196 or 60-6,197 shall be reduced by any period of revocation imposed under sections 60-498.01 to 60-498.04, including any period during which a person has a valid ignition interlock permit or 24/7 sobriety program permit, arising from the same incident.

**Source:** Laws 2004, LB 208, § 15; Laws 2009, LB497, § 8; Laws 2011, LB667, § 36; Laws 2021, LB271, § 11.  
Operative date July 1, 2022.

**60-6,197.06 Operating motor vehicle during revocation period; penalties.**

(1) Unless otherwise provided by law pursuant to an ignition interlock permit or a 24/7 sobriety program permit, any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to section 28-306, section 60-698, subdivision (4), (5), (6), (7), (8), (9), or (10) of section 60-6,197.03, or section 60-6,198, or pursuant to

subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197 as such subdivisions existed prior to July 16, 2004, shall be guilty of a Class IV felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(2) If such person has had a conviction under this section or under subsection (6) of section 60-6,196 or subsection (7) of section 60-6,197, as such subsections existed prior to July 16, 2004, and operates a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to such conviction, such person shall be guilty of a Class IIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for an additional period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

**Source:** Laws 2004, LB 208, § 16; Laws 2006, LB 925, § 12; Laws 2009, LB497, § 9; Laws 2015, LB605, § 78; Laws 2016, LB275, § 1; Laws 2021, LB271, § 12.

Operative date July 1, 2022.

1. Constitutionality
2. Offense
3. Testing/sufficiency of the evidence
4. Enhancement
5. Miscellaneous

#### 1. Constitutionality

A subsequent prosecution of driving while the operator's license was revoked, after defendant had already been convicted of willful reckless driving and operating a motor vehicle while intoxicated, did not violate the double jeopardy clause, because the State did not prove the entire conduct for which defendant had already been convicted. Willful reckless driving and operating a motor vehicle while intoxicated are not lesser-included offenses of operating a motor vehicle while the operator's license was revoked, and a subsequent conviction of driving while the operator's license is revoked would not violate the Blockburger test. *State v. Woodfork*, 239 Neb. 720, 478 N.W.2d 248 (1991).

#### 2. Offense

An ignition-interlock permitholder who drives a vehicle not equipped with an ignition interlock device may not be charged under this section and must be charged under section 60-6,211.05(5). *State v. Hernandez*, 283 Neb. 423, 809 N.W.2d 279 (2012).

Starting a vehicle is an act within the meaning of "operating" a motor vehicle under this section (formerly subsection (6) of section 60-6,196). *State v. Portsche*, 261 Neb. 160, 622 N.W.2d 582 (2001).

Subsection (3) of former section 60-524 does not terminate a court-ordered suspension required as part of a criminal conviction under this section (formerly subsection (6) of section 60-6,196). *State v. Portsche*, 261 Neb. 160, 622 N.W.2d 582 (2001).

In a prosecution under this section (formerly subsection (6) of section 60-6,196) for driving when one's operator's license has been revoked pursuant to subdivision (2)(c) of this section, proof of the prior conviction under subdivision (2)(c) is an essential

element of the offense, and thus, the State has the burden to prove the prior conviction. A prior third-offense drunk driving conviction may be used as an element of a violation under this section (formerly subsection (6) of section 60-6,196) even though the prior conviction is not subject to a collateral attack. *State v. Lee*, 251 Neb. 661, 558 N.W.2d 571 (1997).

#### 3. Testing/sufficiency of the evidence

A certified copy from the Department of Motor Vehicles which shows that a defendant's operator's license was revoked is insufficient to show that the defendant either had counsel or waived counsel at the time he was convicted of the prior offense and is therefore insufficient to support a conviction under this section (formerly subsection (6) of section 60-6,196). *State v. Watkins*, 4 Neb. App. 356, 543 N.W.2d 470 (1996).

#### 4. Enhancement

A felony conviction for driving under a suspended license in violation of this section may not be used either to trigger application of the habitual criminal statute or as a prior offense for purposes of penalty enhancement pursuant thereto. *State v. Hittle*, 257 Neb. 344, 598 N.W.2d 20 (1999).

Pursuant to this section (formerly subsection (6) of section 60-6,196), the enhancement rules applicable to offenses committed under subsection (3) of section 60-6,197.03 (formerly section 60-6,196(2)(c)) are not applicable to license revocation offenses committed under this section. *State v. Kennedy*, 251 Neb. 337, 557 N.W.2d 33 (1996).

#### 5. Miscellaneous

This section does not constrain the trial court's discretion to order when the mandatory 15-year license revocation shall begin. *State v. Policky*, 285 Neb. 612, 828 N.W.2d 163 (2013).

A 15-year revocation must be part of any sentence for a conviction under this section, including a sentence of probation. *State v. Hense*, 276 Neb. 313, 753 N.W.2d 832 (2008).

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).

**60-6,197.07 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; city or village ordinances; authorized.**

Any city or village may enact ordinances in conformance with sections 60-6,196 and 60-6,197. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of sections 60-6,197.02 and 60-6,197.03 with respect to the operator's license of such person shall be applicable the same as though it were a violation of section 60-6,196 or 60-6,197.

**Source:** Laws 2004, LB 208, § 17.

**60-6,197.08 Driving under influence of alcoholic liquor or drugs; presentence evaluation.**

Any person who has been convicted of driving while intoxicated shall, during a presentence evaluation, submit to and participate in an alcohol assessment by a licensed alcohol and drug counselor. The alcohol assessment shall be paid for by the person convicted of driving while intoxicated. At the time of sentencing, the judge, having reviewed the assessment results, may then order the convicted person to follow through on the alcohol assessment results at the convicted person's expense in addition to any penalties deemed necessary.

**Source:** Laws 2004, LB 208, § 18; Laws 2006, LB 925, § 13.

- 1. Constitutionality
- 2. Miscellaneous

**1. Constitutionality**

The provision in this section (formerly subsection (8) of section 60-6,196) requiring the convicted person to pay the expense for the treatment which is a portion of the sentencing order is not intended to be a punishment and therefore provides for neither a fine nor a penalty and does not on its face violate the constitutional prohibitions against excessive fines under Neb. Const. art. I, section 9, or disproportionate penalties under Neb. Const. art. I, section 15. *State v. Hynek*, 263 Neb. 310, 640 N.W.2d 1 (2002).

This section (formerly subsection (8) of section 60-6,196), which authorizes sentencing courts to impose alternative penalties for individuals convicted of certain driving under the influence offenses, when such individuals have undergone an alcohol assessment, does not violate the distribution of powers clause, Neb. Const. art. II, section 1. This section (formerly subsection

(8) of section 60-6,196) is held to be harmonious with other sentencing provisions relating to driving under the influence offenses. *State v. Divis*, 256 Neb. 328, 589 N.W.2d 537 (1999).

**2. Miscellaneous**

The purpose of this section (formerly subsection (8) of section 60-6,196) is to provide (1) an alcohol assessment to individuals who have not previously been assessed for alcohol abuse and (2) a tool for courts to review alcohol assessment results prior to sentencing in order to aid in an effective sentencing decision. In those cases where the county court orders an alcohol assessment pursuant to subsection (8) of this section, the court shall follow the mandated statutory procedure and order the convicted offender to participate in the alcohol assessment prior to sentencing. *State v. Hansen*, 259 Neb. 764, 612 N.W.2d 477 (2000).

**60-6,197.09 Driving under influence of alcoholic liquor or drugs; not eligible for probation or suspended sentence.**

Notwithstanding the provisions of section 60-6,197.03, a person who commits a violation punishable under subdivision (3)(b) or (c) of section 28-306 or subdivision (3)(b) or (c) of section 28-394 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while participating in criminal proceedings for a violation of section 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance enacted in accordance with section 60-6,196 or 60-6,197, or a law of another state if, at the time of the violation under the law of such other state, the offense for which the person was charged would have been a violation of section 60-6,197, shall not be eligible to receive a sentence of probation or a suspended sentence for either violation committed in this state.

**Source:** Laws 2006, LB 925, § 14; Laws 2011, LB667, § 37.

A certified or duly authenticated copy of the former judgment, from any court in which such judgment was had, for any such crimes formerly committed by the party so charged, if in the presentence investigation report, is sufficient prima facie evidence of such former judgment under this section when the defendant had the opportunity to offer rebuttal evidence at the first and second sentencing hearings, but chose not to do so. *State v. Arizola*, 295 Neb. 477, 890 N.W.2d 770 (2017).

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).

**60-6,197.10 Driving under influence of alcohol or drugs; public education campaign; Department of Motor Vehicles; duties.**

The Department of Motor Vehicles shall conduct an ongoing public education campaign to inform the residents of this state about the dangers and consequences of driving under the influence of alcohol or drugs in this state. Information shall include, but not be limited to, the criminal and administrative penalties for driving under the influence, any related laws, rules, instructions, and any explanatory matter. The department shall use its best efforts to utilize all available opportunities for making public service announcements on television and radio broadcasts for the public education campaign and to obtain and utilize federal funds for highway safety and other grants in conducting the public education campaign. The information may be included in publications containing information related to other motor vehicle laws and shall be given wide distribution by the department.

**Source:** Laws 2011, LB667, § 38.

**60-6,198 Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.**

(1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court and shall order that the operator’s license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury means bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child has the same meaning as in section 28-396.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

**Source:** Laws 1986, LB 153, § 6; Laws 1992, LB 291, § 13; R.S.Supp.,1992, § 39-669.39; Laws 1993, LB 370, § 307; Laws 1997, LB 364, § 17; Laws 2001, LB 38, § 50; Laws 2006, LB 57, § 10; Laws 2011, LB667, § 39; Laws 2011, LB675, § 10.

**Cross References**

**Conviction of felony involving use of vehicle**, transmittal of abstract, see section 60-497.02.

A 10-year driver's license revocation imposed on a defendant who was convicted of proximately causing serious bodily injury to another while driving under the influence was a mandatory part of the judgment of conviction and was not a condition of probation; therefore, the district court lacked jurisdiction to later reduce the revocation period. *State v. Irish*, 298 Neb. 61, 902 N.W.2d 669 (2017).

In making a determination as to causation in a prosecution for driving under the influence and causing serious bodily injury, a court should focus on a defendant's act of driving while under the influence of alcohol or drugs and not on his or her intoxication. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle

in violation of section 60-6,196 or section 60-6,197, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

The offense of driving under the influence in violation of section 60-6,196 is a lesser-included offense of driving under the influence causing serious bodily injury in violation of this section. *State v. Dragoo*, 277 Neb. 858, 765 N.W.2d 666 (2009).

The material elements of driving under the influence of alcohol and causing serious bodily injury are: (1) the defendant must have been operating a motor vehicle; (2) the defendant must have been operating the vehicle in violation of section 60-6,196 (driving under the influence of alcohol); and (3) the defendant's act of driving under the influence of alcohol, in violation of section 60-6,196, must proximately cause serious bodily injury. *State v. Bartlett*, 3 Neb. App. 218, 525 N.W.2d 237 (1994).

**60-6,199 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request.**

The peace officer who requires a chemical blood, breath, or urine test or tests pursuant to section 60-6,197 may direct whether the test or tests shall be of blood, breath, or urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests he or she deems appropriate in addition to and following the test or tests administered at the direction of the officer. If the officer refuses to permit such additional test to be taken, then the original test or tests shall not be competent as evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the officer shall be made available to him or her.

**Source:** Laws 1959, c. 168, § 2, p. 613; Laws 1961, c. 187, § 3, p. 578; Laws 1963, c. 227, § 1, p. 712; Laws 1971, LB 948, § 3; Laws 1972, LB 1095, § 3; R.S.Supp.,1972, § 39-727.04; Laws 1990, LB 799, § 3; R.S.Supp.,1992, § 39-669.09; Laws 1993, LB 370, § 294.

- 1. Required test
- 2. Refusal to take test
- 3. Additional test
- 4. Miscellaneous

**1. Required test**

An individual required to take a breath test does not have the option of requesting a blood or urine test. *State v. Morse*, 211 Neb. 448, 318 N.W.2d 893 (1982).

This section which provides that if an officer directs that a test shall be of the person's blood or urine such person may choose whether the test shall be of blood or of urine, does not require the officer to notify the person of his option and if the person takes one or the other of these tests then he has waived his right to insist that the test to be made by the state be one of his choice. *State v. Sommers*, 201 Neb. 809, 272 N.W.2d 367 (1978).

An arrest or the taking into custody on a driving offense required before test is administered. *State v. Baker*, 184 Neb. 724, 171 N.W.2d 798 (1969).

Blood test was properly given and made. *State v. Berg*, 177 Neb. 419, 129 N.W.2d 117 (1964).

To render blood test admissible in evidence, there must be a compliance with this section. *Pierce v. State*, 173 Neb. 319, 113 N.W.2d 333 (1962).

Person taken into custody may choose what test shall be given. *Purcha v. Department of Motor Vehicles*, 172 Neb. 415, 110 N.W.2d 75 (1961).

**2. Refusal to take test**

If an arrested motorist has refused a chemical test to determine the motorist's blood-alcohol level in accordance with section 39-699.08(4), (transferred to section 60-6,197) the motorist has no right to a physician's evaluation of the motorist's condition or chemical tests in addition to that directed by the law enforcement officer. *State v. Clark*, 229 Neb. 103, 425 N.W.2d 347 (1988).

An operator has refused to submit to a test when he conducts himself in a way which would justify a reasonable person in believing that he understood he had been asked to take the test and manifested an unwillingness to take it. *Bauer v. Peterson*, 212 Neb. 174, 322 N.W.2d 389 (1982).

Silence in the face of a direct inquiry as to which test should be administered was equivalent to an express refusal to submit to any test. *Johnson v. Dennis*, 187 Neb. 95, 187 N.W.2d 605 (1971).

**3. Additional test**

The defendant, arrested for driving under the influence, was not deprived by police of his statutory right to an independent blood test where, after requesting an opportunity to undergo an independent blood test, the defendant was provided telephone access to make necessary arrangements, but failed to use such



access to arrange for a timely independent blood test at jail. *State v. Jasa*, 297 Neb. 822, 901 N.W.2d 315 (2017).

Permitting a requested independent chemical test is foundational to the admission in evidence of the result of the breath test performed by the State. Under this section, the police cannot hamper a motorist's reasonable efforts to obtain independent chemical testing; however, the police have no statutory duty to transport a licensee for the purpose of obtaining such testing. *State v. Dake*, 247 Neb. 579, 529 N.W.2d 46 (1995).

Statute does not require officer to inform person of his or her privilege to request an independent test. *Heusman v. Jensen*, 226 Neb. 666, 414 N.W.2d 247 (1987).

An officer is not required to inform the person to be tested of his privilege to request an independent test. *State v. Klingelhofer*, 222 Neb. 219, 382 N.W.2d 366 (1986).

Statute does not require the officer to inform the person to be tested of his privilege to request an independent test. *State v. Miller*, 213 Neb. 274, 328 N.W.2d 769 (1983).

Lab results of state's blood or urine tests are inadmissible if defendant objects after denial of requests for private physician

and tests. *State v. Wahrman*, 199 Neb. 337, 258 N.W.2d 818 (1977).

Failure of officer to advise motorist he could obtain additional test following one directed by officer is not excuse for motorist's failure to submit to test. *Zadina v. Weedlun*, 187 Neb. 361, 190 N.W.2d 857 (1971).

#### 4. Miscellaneous

Because there is no statutory or constitutional requirement that a defendant be advised of his or her rights under this section, there is no constitutional requirement that an advisement must be given in a language the defendant understands. *State v. Wang*, 291 Neb. 632, 867 N.W.2d 564 (2015).

Result of test should be made available to the defendant but request should be made prior to trial. *State v. Fox*, 177 Neb. 238, 128 N.W.2d 576 (1964).

Registered nurse may withdraw blood for a test only if acting under the direction of a physician. *Otte v. State*, 172 Neb. 110, 108 N.W.2d 737 (1961).

### 60-6,200 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.

Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by section 60-6,197 and the test may be given.

**Source:** Laws 1959, c. 168, § 3, p. 614; R.R.S.1943, § 39-727.05; R.S. 1943, (1988), § 39-669.10; Laws 1993, LB 370, § 295.

Defendant found incapable of refusing taking of blood sample. Therefore, consent was implied under this statute. *State v. Brittain*, 212 Neb. 686, 325 N.W.2d 141 (1982).

A refusal to submit to a chemical test for alcohol occurs when the licensee after being asked to submit to a test so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood that he was asked to submit to a test and manifested an unwillingness to do so. *Wohlgemuth v. Pearson*, 204 Neb. 687, 285 N.W.2d 102 (1979).

To constitute a refusal to submit to a chemical test for alcohol requested under this section the only understanding required by the licensee is an understanding that he has been asked to take a test. *Wohlgemuth v. Pearson*, 204 Neb. 687, 285 N.W.2d 102 (1979).

Where a person is incapable of refusal by reason of injuries the same may be taken provided other conditions of section

39-669.08 (transferred to section 60-6,197) are met. *Mackey v. Director of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

Blood may be drawn from an unconscious person only upon compliance with the requirements of statutes complimentary hereto. *State v. Howard*, 193 Neb. 45, 225 N.W.2d 391 (1975).

This section authorizes the taking of test for intoxication even when the defendant is unconscious. *State v. Seager*, 178 Neb. 51, 131 N.W.2d 676 (1964).

Drawing of blood sample by physician who had been directed to act as coroner's physician from body of fatally injured passenger in automobile did not violate prohibition against unreasonable searches and seizures, and result of tests performed by competent chemist using accepted procedures and facilities were admissible. *Gardner v. Meyers*, 491 F.2d 1184 (8th Cir. 1974).

### 60-6,201 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.

(1) Any test made under section 60-6,197, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 60-6,211.02, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 60-6,211.01.

(3) To be considered valid, tests of blood, breath, or urine made under section 60-6,197 or tests of blood or breath made under section 60-6,211.02 shall be

performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service which is defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as such act existed on September 1, 2001, or Title XVIII or XIX of the federal Social Security Act, as such act existed on September 1, 2001, to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion of the department.

(4) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as a laboratory service fee.

(5) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

**Source:** Laws 1959, c. 168, § 4, p. 614; Laws 1963, c. 228, § 2, p. 715; Laws 1963, c. 229, § 2, p. 716; Laws 1971, LB 948, § 4; R.S.Supp.,1972, § 39-727.06; Laws 1986, LB 1047, § 1; Laws 1987, LB 224, § 2; Laws 1990, LB 799, § 4; Laws 1992, LB 291, § 6; Laws 1992, LB 872, § 2; R.S.Supp.,1992, § 39-669.11; Laws 1993, LB 370, § 296; Laws 1993, LB 564, § 9; Laws 1996, LB 1044, § 284; Laws 2000, LB 819, § 76; Laws 2000, LB 1115, § 7; Laws 2001, LB 773, § 17; Laws 2007, LB296, § 234.

#### Cross References

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

1. Admissibility of test results
2. Error or tolerance in testing
3. Effect of evidence
4. Effect of recodification

#### 1. Admissibility of test results

Pursuant to subsection (3) of this section, a prerequisite to the validity of a breath test made under section 60-6,197(3), and consequently a prerequisite to the validity of an arrest, is that the test must be performed in accordance with the procedures approved by the Department of Health and Human Services Regulation and Licensure and "by an individual possessing a valid permit issued by such department for such purpose". *McGuire v. Department of Motor Vehicles*, 253 Neb. 92, 568 N.W.2d 471 (1997).

It is not necessary for the State to introduce into evidence the actual or a certified copy of an individual's state Department of Health permit to perform a blood, breath, or urine test of a suspect arrested for driving while under the influence of alcoholic liquor. *State v. Obermier*, 241 Neb. 802, 490 N.W.2d 693 (1992).

A test made in compliance with this section is sufficient to make a prima facie case on the issue of blood alcohol concentration. Matters of driving and testing are properly viewed as going to the weight of the breath test results, rather than to the

admissibility of the evidence. A valid breath test given within a reasonable time after the accused was stopped is probative of a violation of section 39-669.07 (transferred to section 60-6,196). *State v. Kubik*, 235 Neb. 612, 456 N.W.2d 487 (1990).

Compliance with the requirements of this section in the administration of a breath test may affect the admissibility of the test results but does not go to the question of whether a person was justified in refusing to take the test. *Raymond v. Department of Motor Vehicles*, 219 Neb. 821, 366 N.W.2d 758 (1985).

The requirements of this section are foundational requirements that must be laid before the admission of the test result into evidence; once the court determines that the evidence is to be admitted, weight and credibility are for the jury. *State v. West*, 217 Neb. 389, 350 N.W.2d 512 (1984).

The results of a test made under the provisions of section 39-669.08 (transferred to section 60-6,197) may be received in evidence only if the requirements of section 39-669.11 (transferred to section 60-6,201) are met. In order to show that the requirements have been met it is necessary to show that the method of performing the test was approved by the Nebraska Department of Health and that the person administering the test was qualified and had a valid license from the Department of Health. *State v. Kolar*, 206 Neb. 619, 294 N.W.2d 350 (1980); *State v. Gerber*, 206 Neb. 75, 291 N.W.2d 403 (1980).

Results of chemical tests for alcohol content admissible as evidence under specified conditions. *State v. Jablonski*, 199 Neb. 341, 258 N.W.2d 918 (1977).

Result of test was competent evidence in prosecution for driving motor vehicle while under the influence of intoxicating liquor. *State v. Fox*, 177 Neb. 238, 128 N.W.2d 576 (1964).

To be admissible in evidence, tests made must meet the requirements prescribed by statute. *Otte v. State*, 172 Neb. 110, 108 N.W.2d 737 (1961).

Unlike section 60-6,210(1), subsection (1) of this section does not limit the use of chemical test results to prosecution under a specific statute; rather, it authorizes the use of results of the specified chemical test as competent evidence in "any" prosecution "under" a state statute "involving" operation of a motor vehicle while under the influence of alcoholic liquor or "involv-

ing" such operation with an excessive level of alcohol. *State v. Guzman-Gomez*, 13 Neb. App. 235, 690 N.W.2d 804 (2005).

## 2. Error or tolerance in testing

Evidence of breath or blood alcohol content over the statutory limit is not necessarily insufficient simply because the defendant's expert testimony as to the margin of error is not specifically rebutted by expert testimony from the State. *State v. Kuhl*, 276 Neb. 497, 755 N.W.2d 389 (2008).

In order to support a conviction for the offense of drunk driving based solely on a chemical test the result of the chemical test, when taken together with its tolerance for error, must equal or exceed the statutory percentage. *State v. Bjornsen*, 201 Neb. 709, 271 N.W.2d 839 (1978).

The Legislature having selected a particular percentage of alcohol to be a criminal offense if present in a person operating a motor vehicle, it is not unreasonable to require that a test, designed to show that percent, do so outside of any error or tolerance inherent in the testing process. *State v. Bjornsen*, 201 Neb. 709, 271 N.W.2d 839 (1978).

## 3. Effect of evidence

While the Legislature has the right to prescribe acceptable methods of testing for alcohol content in the body fluid, and perhaps the right to prescribe that such evidence is admissible in a court of law as competent evidence, it is a judicial function to determine whether the evidence, if believed, is sufficient to sustain a conviction. *State v. Burling*, 224 Neb. 725, 400 N.W.2d 872 (1987).

Evidence admitted pursuant to this section does not create a presumption of guilt but may be sufficient to make out a prima facie case on blood alcohol concentration issue. *State v. Dush*, 214 Neb. 51, 332 N.W.2d 679 (1983).

## 4. Effect of recodification

The substance of section 39-669.11, which requires that driving under the influence of alcohol breath tests be performed according to the Department of Health and Human Services rules, did not change in any material way when it was recodified in this section. *State v. Engleman*, 5 Neb. App. 485, 560 N.W.2d 851 (1997).

## **60-6,202 Driving under influence of alcoholic liquor or drugs; blood test; withdrawing requirements; damages; liability; when.**

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to sections 60-6,197 and 60-6,211.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such sections except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-6,197 or 60-6,211.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the

certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

**Source:** Laws 1959, c. 168, § 5, p. 614; Laws 1971, LB 948, § 5; R.S.Supp.,1972, § 39-727.07; Laws 1974, LB 679, § 1; Laws 1975, LB 140, § 1; Laws 1992, LB 291, § 7; R.S.Supp.,1992, § 39-669.12; Laws 1993, LB 370, § 297; Laws 1993, LB 564, § 10; Laws 1997, LB 210, § 5; Laws 2000, LB 819, § 77; Laws 2000, LB 1115, § 8; Laws 2007, LB296, § 235.

Cross References

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

**60-6,203 Driving under influence of alcoholic liquor or drug; violation of city or village ordinance; fee for test; court costs.**

Upon the conviction of any person for violation of section 60-6,196 or 60-6,211.01 or of driving a motor vehicle while under the influence of alcoholic liquor or of any drug in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests pursuant to a permit issued in accordance with section 60-6,201, for the test administered and the analysis thereof under the provisions of sections 60-6,197 and 60-6,211.02, if such test was actually made.

**Source:** Laws 1961, c. 188, § 1, p. 579; Laws 1971, LB 948, § 6; R.S.Supp.,1972, § 39-727.13; Laws 1978, LB 673, § 1; R.S.1943, (1988), § 39-669.13; Laws 1993, LB 370, § 298; Laws 1993, LB 564, § 11.

**60-6,204 Driving under influence of alcoholic liquor or drugs; test without preliminary breath test; when; qualified personnel.**

Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit to a chemical test or tests of his or her blood, breath, or urine as provided in section 60-6,197 without the preliminary breath test if the arresting peace officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of determining the concentration of alcohol or the presence of drugs, but this limitation shall not apply to the taking of a urine or breath specimen.

**Source:** Laws 1971, LB 948, § 7; Laws 1972, LB 1095, § 4; R.S.Supp.,1972, § 39-727.15; Laws 1974, LB 679, § 2; Laws 1990, LB 799, § 5; Laws 1992, LB 291, § 8; R.S.Supp.,1992, § 39-669.14; Laws 1993, LB 370, § 299; Laws 2000, LB 819, § 78; Laws 2000, LB 1115, § 9.

## Cross References

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

While there is no conditional or qualified refusal, if a refusal was reasonable under the circumstances, such refusal cannot be the basis of a revocation of driving privileges. Fear of needles or AIDS does not in and of itself provide a justifiable basis for refusal. If a licensee questions the qualifications of a technician who is to draw blood, the licensee shall be orally or otherwise informed of the technician's training and experience. A licensee's refusal to allow a blood draw is justified and reasonable in the absence of oral or other information about the technician's training and experience after such qualifications have been questioned. *Ruch v. Conrad*, 247 Neb. 318, 526 N.W.2d 653 (1995).

Certified medical technologist was qualified technician to withdraw blood for purpose of determining alcoholic or drug

content therein. *State v. Stein*, 241 Neb. 225, 486 N.W.2d 921 (1992).

This section is *pari materia* with section 39-727.03 (transferred to section 60-6,197), and other sections mentioned in opinion. *Stevenson v. Sullivan*, 190 Neb. 295, 207 N.W.2d 680 (1973).

Implied Consent Law as amended in 1971 does not involve compulsion within Fifth Amendment; is constitutional; and penalties are as provided in section 39-727 (transferred to section 60-6,196). *State v. Manley*, 189 Neb. 415, 202 N.W.2d 831 (1972).

**60-6,205 Transferred to section 60-498.01.**

**60-6,206 Transferred to section 60-498.02.**

**60-6,207 Transferred to section 60-498.03.**

**60-6,208 Transferred to section 60-498.04.**

**60-6,209 License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.**

(1) Any person whose operator's license has been revoked pursuant to a conviction for a violation of sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles not more often than once per calendar year, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt of the application and a nonrefundable application fee of one hundred dollars, the Director of Motor Vehicles shall review the application and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs, as determined by a counselor certified or licensed in this state;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription;

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason; and

(f) Such person has agreed that, if the Board of Pardons reinstates such person's eligibility to apply for an ignition interlock permit, such person must provide proof, to the satisfaction of the department, that an ignition interlock device has been installed and is maintained on one or more motor vehicles such person operates for the duration of the original fifteen-year revocation period and such person must operate only motor vehicles so equipped for the duration of the original fifteen-year revocation period.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license or an ignition interlock permit or orders a reprieve of such person's motor vehicle operator's license revocation, such reinstatement or reprieve may be conditioned for the duration of the original revocation period on such person's continued recovery and, if such person is a holder of an ignition interlock permit, shall be conditioned for the duration of the original revocation period on such person's operation of only motor vehicles equipped with an ignition interlock device. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an operator's license or an ignition interlock permit or orders a reprieve of such person's motor vehicle operator's license revocation, the board shall notify the Department of Motor Vehicles of the reinstatement or reprieve. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1992, LB 291, § 10; R.S.Supp.,1992, § 39-669.19; Laws 1993, LB 370, § 304; Laws 1998, LB 309, § 18; Laws 2001, LB 38, § 54; Laws 2003, LB 209, § 13; Laws 2004, LB 208, § 12; Laws 2004, LB 1083, § 102; Laws 2008, LB736, § 9; Laws 2014, LB998, § 12; Laws 2019, LB270, § 41.

This section (60-6,209 (Reissue 1993)) clearly defines the 15-year revocation as serving as a punishment and is unconstitutional because it permits a judicial commutation of a sentence.

of punishment. Because this section permits the judicial branch to exercise the power of commutation, a power that clearly belongs to the executive branch, this section is unconstitutional as a violation of the separation of powers clause of the Nebraska Constitution. *State v. Bainbridge*, 249 Neb. 260, 543 N.W.2d 154 (1996).

The law does not grant an absolute right to defendant to a reduction of a term of revocation, but provides that the period of revocation "may" be reduced if the provisions of the statute are shown by the applicant to be satisfied by the preponderance of the evidence. *State v. Packett*, 246 Neb. 888, 523 N.W.2d 695 (1994).

**60-6,210 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.**

(1) If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of Nebraska and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution for a violation punishable under subdivision (3)(b) or (c) of section 28-306 or a violation of section 28-305, 60-6,196, or 60-6,198 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a peace officer requested the driver to submit to a test as provided in section 60-6,197 or (b) the driver had refused a chemical test.

(2) Any physician, registered nurse, qualified technician, or hospital in this state performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under subdivision (3)(b) or (c) of section 28-306 or section 28-305, 60-6,196, or 60-6,198 and (b) to any prosecuting attorney in another state who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other state if the other state requires a similar disclosure by any hospital or person in such state to any prosecuting attorney in Nebraska who requests the results for use in such a criminal prosecution under the laws of Nebraska.

**Source:** Laws 1992, LB 872, § 3; R.S.Supp.,1992, § 39-669.20; Laws 1993, LB 370, § 305; Laws 2004, LB 208, § 20; Laws 2006, LB 925, § 15.

Admission of evidence of blood test results in a criminal prosecution for manslaughter under section 28-305 is not authorized under this section. *State v. Brouillette*, 265 Neb. 214, 655 N.W.2d 876 (2003).

Unlike subsection (1) of this section, section 60-6,201(1) does not limit the use of chemical test results to prosecution under a

specific statute; rather, it authorizes the use of results of the specified chemical test as competent evidence in "any" prosecution "under" a state statute "involving" operation of a motor vehicle while under the influence of alcoholic liquor or "involving" such operation with an excessive level of alcohol. *State v. Guzman-Gomez*, 13 Neb. App. 235, 690 N.W.2d 804 (2005).

**60-6,211 Lifetime revocation of motor vehicle operator's license; reduction; procedure.**

Any person who prior to April 19, 1986, has had his or her motor vehicle operator's license revoked for life pursuant to section 60-6,196 or 60-6,197 may submit an application to the court for a reduction of such lifetime revocation. The court in its discretion may reduce such revocation to a period of fifteen years.

**Source:** Laws 1986, LB 153, § 5; R.S.1943, (1988), § 39-669.38; Laws 1993, LB 370, § 306.

The commutation of a motor vehicle operator's license suspension by the judiciary is an improper use of a power reserved

for the executive branch, and since the thrust of this section is

toward that end, it is unconstitutional. *State v. Diaz*, 266 Neb. 966, 670 N.W.2d 794 (2003).

Where a criminal statute is amended to mitigate punishment, the sentence is that provided by a statute amended before final judgment absent a specific contrary legislative mandate. *State v. Thompson*, 224 Neb. 922, 402 N.W.2d 271 (1987).

In a case pending appeal when section 39-669.07 (transferred to section 60-6,196) was amended, a sentence of lifetime suspension of a driver's license for driving while under the influence should be vacated and in lieu thereof a sentence of suspension for 15 years imposed. *State v. Painter*, 224 Neb. 905, 402 N.W.2d 677 (1987).

**60-6,211.01 Person under twenty-one years of age; prohibited acts.**

It shall be unlawful for any person under twenty-one years of age to operate or be in the actual physical control of any motor vehicle:

(1) When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood but less than the concentration prescribed under subdivision (1)(b) of section 60-6,196; or

(2) When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath but less than the concentration prescribed under subdivision (1)(c) of section 60-6,196.

**Source:** Laws 1993, LB 564, § 2; Laws 1998, LB 309, § 19.

**60-6,211.02 Implied consent to submit to chemical test; when test administered; refusal; penalty.**

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person under twenty-one years of age to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath when the officer has probable cause to believe that such person was driving or was in the actual physical control of a motor vehicle in this state in violation of section 60-6,211.01. Such peace officer may require such person to submit to a preliminary breath test. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 60-6,211.01 shall be placed under arrest.

(3) Any person arrested as provided in this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the concentration of alcohol. If the chemical test discloses the presence of a concentration of alcohol in violation of section 60-6,211.01, the person shall be found guilty of a traffic infraction as defined in section 60-672 and upon conviction shall have his or her operator's license impounded by the court for thirty days for each violation of section 60-6,211.01. Any person who refuses to submit to such test or tests required pursuant to this section shall not have the tests taken but shall be found guilty of a traffic infraction as defined in section 60-672 and upon conviction shall have his or her operator's license impounded by the court for ninety days for refusal to submit to such tests required pursuant to this section.

**Source:** Laws 1993, LB 564, § 3; Laws 1998, LB 309, § 20.



**60-6,211.03 Impounded operator's license; operation relating to employment authorized.**

Any person whose operator's license is impounded pursuant to section 60-6,211.02 may be allowed by the court to operate a motor vehicle in order to drive to and from his or her place of employment.

**Source:** Laws 1993, LB 564, § 4; Laws 1998, LB 309, § 21.

**60-6,211.04 Applicability of other laws.**

Sections 60-6,211.01 to 60-6,211.03 shall not operate to prevent any person, regardless of age, from being prosecuted or having any action taken for a violation of section 60-6,196 or 60-6,197 or having his or her operator's license revoked pursuant to sections 60-498.01 to 60-498.04 for a violation of section 60-6,196 or 60-6,197 or from being prosecuted or having any action taken under any other provision of law. If such person is believed to be under the influence of alcoholic liquor pursuant to section 60-6,196 or 60-6,197, sections 60-6,211.01 to 60-6,211.03 shall not operate to prevent prosecution of such person for a violation of section 60-6,196 or 60-6,197 even if sections 60-6,211.01 to 60-6,211.03 apply.

**Source:** Laws 1993, LB 564, § 5; Laws 2003, LB 209, § 14; Laws 2004, LB 208, § 21.

**60-6,211.05 Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; Department of Motor Vehicles Ignition Interlock Fund; created; use; investment; prohibited acts relating to tampering with device; hearing.**

(1) If an order is granted under section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, the court may order that the defendant install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant during the period of revocation. Upon sufficient evidence of installation, the defendant may apply to the director for an ignition interlock permit pursuant to section 60-4,118.06. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. The Department of Motor Vehicles shall issue an ignition interlock permit to the defendant under section 60-4,118.06 only upon sufficient proof that a defendant has installed an ignition interlock device on any motor vehicle that the defendant will operate during his or her release.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (8) of section 60-498.01. A person shall be eligible to be issued an ignition

interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device if he or she is not subject to any other suspension, cancellation, required no-driving period, or period of revocation and has successfully completed the ignition interlock permit application process. The Department of Motor Vehicles shall review its records and the driving record abstract of any person who applies for an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device to determine (a) the applicant's eligibility for an ignition interlock permit, (b) the applicant's previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 or any previous administrative license revocation, if any, and (c) if the applicant is subject to any required no-drive periods before the ignition interlock permit may be issued.

(4)(a) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the defendant to apply for an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device.

(b) Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow operation by the defendant of only an ignition-interlock-equipped motor vehicle.

(c) Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a reprieve is made.

(5) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(6) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2) of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(7) The director shall adopt and promulgate rules and regulations regarding the approval of ignition interlock devices, the means of installing ignition interlock devices, and the means of administering the ignition interlock permit program.

(8)(a) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid directly to the ignition interlock provider by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device.

(b) If the Department of Motor Vehicles has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section, such costs shall be paid out of the Department of Motor Vehicles Ignition

Interlock Fund if such funds are available, according to rules and regulations adopted and promulgated by the department. Such costs shall also be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available and if the court or the Board of Pardons, whichever is applicable, has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section. The Department of Motor Vehicles Ignition Interlock Fund is created. Money in the Department of Motor Vehicles Ignition Interlock Fund may be used for transfers to the General Fund at the direction of the Legislature. On October 1, 2017, or as soon thereafter as administratively possible, the State Treasurer shall transfer twenty-five thousand dollars from the Department of Motor Vehicles Ignition Interlock Fund to the Violence Prevention Cash Fund. On October 1, 2018, or as soon thereafter as administratively possible, the State Treasurer shall transfer twenty-five thousand dollars from the Department of Motor Vehicles Ignition Interlock Fund to the Violence Prevention Cash Fund. Any money in the Department of Motor Vehicles Ignition Interlock Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9)(a)(i) An ignition interlock service facility shall notify the appropriate district probation office or the appropriate court, as applicable, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(ii) An ignition interlock service facility shall notify the Department of Motor Vehicles, if the ignition interlock permit is issued pursuant to sections 60-498.01 to 60-498.04, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(b) If a district probation office receives evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, from an ignition interlock service facility, the district probation office shall notify the appropriate court of such violation. The court shall immediately schedule an evidentiary hearing to be held within fourteen days after receiving such evidence, either from the district probation office or an ignition interlock service facility, and the court shall cause notice of the hearing to be given to the person operating a motor vehicle pursuant to an order under subsection (1) of this section. If the person who is the subject of such evidence does not appear at the hearing and show cause why the order made pursuant to subsection (1) of this section should remain in effect, the court shall rescind the original order. Nothing in this subsection shall apply to an order made by the Board of Pardons pursuant to section 83-1,127.02.

(10) Notwithstanding any other provision of law, the issuance of an ignition interlock permit by the Department of Motor Vehicles under section 60-498.01 or an order for the installation of an ignition interlock device and ignition interlock permit made pursuant to subsection (1) of this section as part of a conviction, as well as the administration of such court order by the Office of Probation Administration for the installation, maintenance, and removal of

such device, as applicable, shall not be construed to create an order of probation when an order of probation has not been issued.

**Source:** Laws 1993, LB 564, § 6; Laws 1998, LB 309, § 24; Laws 2001, LB 38, § 55; Laws 2003, LB 209, § 15; Laws 2004, LB 208, § 22; Laws 2006, LB 925, § 16; Laws 2008, LB736, § 10; Laws 2009, LB497, § 10; Laws 2010, LB924, § 5; Laws 2011, LB667, § 40; Laws 2012, LB751, § 46; Laws 2013, LB158, § 5; Laws 2013, LB199, § 27; Laws 2017, LB331, § 28.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

Under the language of subsection (2) of this section, if the sentencing court orders the use of a continuous alcohol monitoring device, the convicted person using the continuous alcohol monitoring device must abstain from alcohol use at all times. *State v. Sikes*, 286 Neb. 38, 834 N.W.2d 609 (2013).

An ignition-interlock permitholder who drives a vehicle not equipped with an ignition interlock device may not be charged under section 60-6,197.06 and must be charged under subsec-

tion (5) of this section. *State v. Hernandez*, 283 Neb. 423, 809 N.W.2d 279 (2012).

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

**60-6,211.06 Implied consent to submit to chemical test violation; court and department records; expungement; when authorized.**

(1) An abstract of the court record of every person whose license has been impounded pursuant to section 60-6,211.02 shall be transmitted to the Department of Motor Vehicles. This violation shall become part of the person's record maintained by the department for a period of not longer than ninety days. After ninety days, the department shall expunge the violation from the person's record.

(2) Any person whose license has been impounded pursuant to section 60-6,211.02 and who refused to submit to a chemical test or tests required pursuant to such section shall have the violation become part of the person's record maintained by the department for a period of not longer than one hundred twenty days. After one hundred twenty days, the department shall expunge the violation from the person's record.

**Source:** Laws 1998, LB 309, § 22.

**60-6,211.07 Implied consent to submit to chemical test violation; impounded license; return; prohibited act; effect.**

(1) At the end of the impoundment period under section 60-6,211.02, the operator's license shall be returned by the court to the licensee.

(2) Any person who unlawfully operates a motor vehicle during the period of impoundment shall be subject to section 60-4,108.

**Source:** Laws 1998, LB 309, § 23; Laws 2001, LB 38, § 56.

**60-6,211.08 Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.**

(1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume,

brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Limousine means a luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and no more than fourteen persons behind the driver with a physical partition separating the driver seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses;

(d) Open alcoholic beverage container, except as provided in subsection (3) of section 53-123.04 and subdivision (1)(c) of section 53-123.11, means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(e) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) Except as otherwise provided in this section, it is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186 or subsection (4) of this section, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

(4) This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by rules and regulations adopted and promulgated by the Public Service Commission and subject to Chapter 75, article 3. Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this state if (a) the driver of the limousine or bus is prohibited from consuming alcoholic liquor and (b) alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area.

**Source:** Laws 1999, LB 585, § 4; Laws 2006, LB 562, § 6; Laws 2011, LB281, § 3.

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).

**60-6,211.09 Continuous alcohol monitoring devices; Office of Probation Administration; duties.**

The Office of Probation Administration shall adopt and promulgate rules and regulations to approve the use of continuous alcohol monitoring devices by individuals sentenced to probation for violating section 60-6,196 or 60-6,197.

**Source:** Laws 2006, LB 925, § 17.

**60-6,211.10 Repealed. Laws 2009, LB497, § 12.****60-6,211.11 Ignition interlock device; 24/7 sobriety program permit; prohibited acts; violations; penalties.**

(1) Except as provided in subsection (2) of this section, any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class I misdemeanor if he or she (a) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (b) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order.

(2) Any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class IV felony if he or she (a)(i) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (ii) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order and (b) operates the motor vehicle as described in subdivision (a)(i) or (ii) of this subsection when he or she has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(3) Any person who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order or Department of Motor Vehicles order under which the device was installed shall be guilty of a Class III misdemeanor.

(4) Any person who has applied for and received a 24/7 sobriety program permit and operates a motor vehicle when the person has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of the person's blood or a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath, or who refuses a chemical test, shall be guilty of a Class III misdemeanor.

**Source:** Laws 2011, LB667, § 41; Laws 2014, LB998, § 13; Laws 2021, LB271, § 13.

Operative date July 1, 2022.

## (p) OTHER SERIOUS TRAFFIC OFFENSES

**60-6,212 Careless driving, defined.**

Any person who drives any motor vehicle in this state carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving.

**Source:** Laws 1979, LB 575, § 1; R.S.1943, (1988), § 39-669; Laws 1993, LB 370, § 308.

**Cross References**

**Applicability of statute to private property**, see section 60-6,108.

**Operator's license**, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Careless driving is a lesser-included offense of reckless driving. *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997).

The failure of this section to limit the proscription as to careless driving to the public roads is not an impermissible, unconstitutional overbreadth. The statutory language, carelessly or without due caution, is not unconstitutionally vague. *State v. Merithew*, 220 Neb. 530, 371 N.W.2d 110 (1985).

This section, which provides that any person who operates a motor vehicle in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of careless driving, is vague and indefinite, and is thus unconstitutional. *State v. Huffman*, 202 Neb. 434, 275 N.W.2d 838 (1979). This case applies to section 39-669 as it existed prior to being repealed by Laws 1979, LB 575, section 3.

**60-6,213 Reckless driving, defined.**

Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(1), p. 410; R.R.S.1943, § 39-7,107; R.S.1943, (1988), § 39-669.01; Laws 1993, LB 370, § 309.

**Cross References**

**Applicability of statute to private property**, see section 60-6,108.

**Motor vehicle homicide**, penalty, see section 28-306.

**Operator's license**, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Speed alone does not support a conviction for reckless driving, but it does have a bearing on whether one was driving dangerously under the surroundings and attendant circumstances of the particular case. *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997).

Prosecution for traffic infraction is a criminal action. *State v. Knoles*, 199 Neb. 211, 256 N.W.2d 873 (1977).

Improper turn by defendant while overtaking complainant's auto, held to be reckless driving. *State v. Kufeldt*, 197 Neb. 377, 248 N.W.2d 781 (1977).

History of statute reviewed in considering municipal ordinance. *State v. Green*, 182 Neb. 615, 156 N.W.2d 724 (1968).

Upon conviction, suspension of driver's license is authorized. *Kroger v. State*, 158 Neb. 73, 62 N.W.2d 312 (1954).

Reckless driving occurs when any person drives a motor vehicle in such a manner as to indicate an indifferent or wanton

disregard of the safety of persons or property. *State v. Malone*, 26 Neb. App. 121, 917 N.W.2d 164 (2018).

Recklessness, for purposes of this section, has been defined as the disregard for or indifference to the safety of another or for the consequences of one's act. *State v. Malone*, 26 Neb. App. 121, 917 N.W.2d 164 (2018).

One cannot commit the greater offense of willful reckless driving without simultaneously committing the lesser offense of reckless driving; the only distinction between these offenses is intent. *State v. Scherbarth*, 24 Neb. App. 897, 900 N.W.2d 213 (2017).

Under certain circumstances, careless driving under section 60-6,212 should be instructed as a lesser-included offense of reckless driving. *State v. Howard*, 5 Neb. App. 596, 560 N.W.2d 516 (1997).

**60-6,214 Willful reckless driving, defined.**

Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(3), p. 410; R.R.S.1943, § 39-7,107.02; R.S.1943, (1988), § 39-669.03; Laws 1993, LB 370, § 310.

**Cross References**

**Applicability of statute to private property**, see section 60-6,108.

**Motor vehicle homicide**, penalty, see section 28-306.

**Operator's license**, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Willful reckless driving is characterized by a deliberate disregard for the safety of others or their property. For there to be willful reckless driving it is not necessary that there be property damage or injury inflicted. Here, intentional or deliberate disregard for the safety or property of others was lacking, since there was no evidence of the presence of any persons or property subjected to danger in the area, and the defendant was only driving 36 m.p.h. in a 25-m.p.h. zone. *State v. Douglas*, 239 Neb. 891, 479 N.W.2d 457 (1992).

History of statute reviewed in considering municipal ordinance. *State v. Green*, 182 Neb. 615, 156 N.W.2d 724 (1968).

The conscious and intentional driving which the driver knows, or should know, creates an unreasonable risk of harm is sufficient to sustain a conviction. *State v. DiLorenzo*, 181 Neb. 59, 146 N.W.2d 791 (1966).

One cannot commit the greater offense of willful reckless driving without simultaneously committing the lesser offense of reckless driving; the only distinction between these offenses is intent. *State v. Scherbarth*, 24 Neb. App. 897, 900 N.W.2d 213 (2017).

### **60-6,215 Reckless driving; first offense; penalty.**

Every person convicted of reckless driving shall, upon a first conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(2), p. 410; Laws 1955, c. 154, § 1, p. 455; R.R.S.1943, § 39-7,107.01; R.S.1943, (1988), § 39-669.02; Laws 1993, LB 370, § 311; Laws 1993, LB 575, § 11.

#### **Cross References**

**Applicability of statute to private property**, see section 60-6,108.

### **60-6,216 Willful reckless driving; first offense; penalty.**

Every person convicted of willful reckless driving shall, upon a first conviction, be guilty of a Class III misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than thirty days nor more than one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(4), p. 410; Laws 1953, c. 214, § 3, p. 757; R.R.S.1943, § 39-7,107.03; R.S.1943, (1988), § 39-669.04; Laws 1993, LB 370, § 312; Laws 1993, LB 575, § 12; Laws 2001, LB 38, § 57.

#### **Cross References**

**Applicability of statute to private property**, see section 60-6,108.

Evidence that a motorist ran at least one stop sign, exceeded the speed limit, and crossed over the road median during a chase by a police officer, was sufficient to sustain his conviction for willful reckless driving even though no property damage was done to other cars and no injuries were sustained. *Goodloe v. Parratt*, 453 F.Supp. 1380 (D. Neb. 1978).

The imposition of concurrent terms of ten years imposed upon a defendant who was convicted of willful reckless driving and operating a motor vehicle to avoid arrest, and who had been adjudged to be an habitual criminal, does not constitute cruel and unusual punishment. *Goodloe v. Parratt*, 453 F.Supp. 1380 (D. Neb. 1978).

### **60-6,217 Reckless driving or willful reckless driving; second offense; penalty.**

Upon a second conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class II misdemeanor, and the court shall order the person so convicted, as part of the judgment of conviction, not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period.



The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the motor vehicle which such person was operating in such reckless or willful reckless manner is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the court for a period of not less than two months nor more than one year at the expense and risk of the owner thereof, except that any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lienholder for the purpose of foreclosing and satisfying the lien.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(5), p. 410; Laws 1953, c. 214, § 4, p. 758; R.R.S.1943, § 39-7,107.04; R.S.1943, (1988), § 39-669.05; Laws 1993, LB 370, § 313; Laws 1993, LB 575, § 13; Laws 2001, LB 38, § 58.

**Cross References**

Applicability of statute to private property, see section 60-6,108.

**60-6,218 Reckless driving or willful reckless driving; third and subsequent offenses; penalty.**

Upon a third or subsequent conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class I misdemeanor. The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(6), p. 411; Laws 1953, c. 214, § 5, p. 758; Laws 1957, c. 366, § 21, p. 1258; R.R.S.1943, § 39-7,107.05; Laws 1991, LB 420, § 1; R.S.Supp.,1992, § 39-669.06; Laws 1993, LB 370, § 314; Laws 1993, LB 31, § 16; Laws 1993, LB 575, § 14; Laws 2001, LB 38, § 59.

**Cross References**

Applicability of statute to private property, see section 60-6,108.

Defendant found guilty of third offense willful reckless driving, avoiding arrest, and habitual criminal charge received two concurrent ten-year sentences. *State v. Goodloe*, 197 Neb. 632, 250 N.W.2d 606 (1977).

(q) LIGHTING AND WARNING EQUIPMENT

**60-6,219 Motor vehicle; autocycle or motorcycle; lights; requirements; prohibited acts.**

(1) Every motor vehicle upon a highway within this state during the period from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons or vehicles upon the highway at a distance of five hundred feet ahead shall be equipped with lighted headlights and taillights as respectively required in this section for different classes of vehicles.

(2) Every motor vehicle, other than an autocycle, a motorcycle, a road roller, or road machinery, shall be equipped with two or more headlights, at the front of and on opposite sides of the motor vehicle. The headlights shall comply with the requirements and limitations set forth in sections 60-6,221 and 60-6,223.

(3) Every motor vehicle and trailer, other than an autocycle, a motorcycle, a road roller, or road machinery, shall be equipped with one or more taillights, at the rear of the motor vehicle or trailer, exhibiting a red light visible from a distance of at least five hundred feet to the rear of such vehicle.

(4) Every autocycle or motorcycle shall be equipped with at least one and not more than two headlights and with a taillight exhibiting a red light visible from a distance of at least five hundred feet to the rear of such autocycle or motorcycle. The headlights shall comply with the requirements and limitations set forth in sections 60-6,221 and 60-6,223.

(5) The requirement in this section as to the distance from which lights must render obstructions visible or within which lights must be visible shall apply during the time stated in this section upon a straight, level, unlighted highway under normal atmospheric conditions.

(6) It shall be unlawful for any owner or operator of any motor vehicle to operate such vehicle upon a highway unless:

(a) The condition of the lights and electric circuit is such as to give substantially normal light output;

(b) Each taillight shows red directly to the rear, the lens covering each taillight is unbroken, each taillight is securely fastened, and the electric circuit is free from grounds or shorts;

(c) There is no more than one spotlight except for law enforcement personnel, government employees, and public utility employees;

(d) There are no more than two auxiliary driving lights and every such auxiliary light meets the requirements for auxiliary driving lights provided in section 60-6,225;

(e) If equipped with any lighting device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candlepower, such lighting device meets the requirements of subsection (4) of section 60-6,225; and

(f) If equipped with side cowl or fender lights, there are no more than two such lights and each such side cowl or fender light emits an amber or white light.

**Source:** Laws 1931, c. 110, § 43, p. 319; Laws 1935, c. 134, § 8, p. 488; Laws 1939, c. 78, § 4, p. 319; C.S.Supp.,1941, § 39-1174; R.S. 1943, § 39-778; Laws 1955, c. 152, § 1, p. 450; Laws 1957, c. 366, § 6, p. 1249; R.R.S.1943, § 39-778; Laws 1975, LB 11, § 2; Laws 1981, LB 544, § 2; Laws 1987, LB 224, § 6; Laws 1989, LB 283, § 2; R.S.Supp.,1992, § 39-6,138; Laws 1993, LB 370, § 315; Laws 1993, LB 575, § 32; Laws 1995, LB 59, § 2; Laws 2015, LB231, § 31.

#### Cross References

Motor-driven cycles, light requirements, see section 60-6,187.

1. Violations
2. Not violations

## 3. Miscellaneous

## 1. Violations

Statute applied as to driving in fog in daytime. *Becker v. Hasebroock*, 157 Neb. 353, 59 N.W.2d 560 (1953).

If truck had no lights burning, it violated this section. *Davis v. Spindler*, 156 Neb. 276, 56 N.W.2d 107 (1952).

It is unlawful to operate automobile on highway at night without appropriate lights. *Segebart v. Gregory*, 156 Neb. 261, 55 N.W.2d 678 (1952).

Where truck was involuntarily stopped on highway and driver left same without lights more than one-half hour after sunset, there was evidence of negligence. *Plumb v. Burnham*, 151 Neb. 129, 36 N.W.2d 612 (1949).

Leaving car standing on highway at night without lights constitutes violation of this section. *Remmenga v. Selk*, 150 Neb. 401, 34 N.W.2d 757 (1948).

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).

## 2. Not violations

This section did not apply where automobile was disabled because of reasons beyond control of operator. *Haight v. Nelson*, 157 Neb. 341, 59 N.W.2d 576 (1953).

Road rollers and road machinery are specifically exempted from displaying red lights. *Miller v. Abel Construction Co.*, 140 Neb. 482, 300 N.W. 405 (1941).

Act does not require display of red tail light on parked automobile. *McGaffey v. Blosser*, 129 Neb. 371, 261 N.W. 565 (1935).

## 3. Miscellaneous

Evidence of violation of this section is evidence of negligence or contributory negligence. *Horst v. Johnson*, 237 Neb. 155, 465 N.W.2d 461 (1991).

Trial court did not err in failing to give instruction upon effect of this section. *Clark v. Smith*, 181 Neb. 461, 149 N.W.2d 425 (1967).

Violation of statute is evidence of negligence. *Guerin v. Forburger*, 161 Neb. 824, 74 N.W.2d 870 (1956).

Instruction on particular requirements of this section was not required. *Segebart v. Gregory*, 160 Neb. 64, 69 N.W.2d 315 (1955).

Death arising from violation of this section may constitute manslaughter. *Vaca v. State*, 150 Neb. 516, 34 N.W.2d 873 (1948).

Failure to display clearance lights and a tail light on rear of truck was not a contributory cause of accident when truck was seen by driver of other car in ample time to avoid collision. *Hief v. Roberts Dairy Co.*, 138 Neb. 885, 296 N.W. 331 (1941).

**60-6,220 Lights; vehicle being driven; vehicle parked on freeway.**

Whenever a motor vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the times mentioned in section 60-6,219, such vehicle shall be equipped with one or more lights which shall exhibit a light in such color as designated by the Department of Motor Vehicles on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that a local authority may provide by ordinance that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or obstruction within a distance of five hundred feet upon such highway.

Any lighted headlights upon a parked vehicle shall be depressed or dimmed and turnsignals shall not be flashed on one side only. On a freeway, the operator of any parked vehicle shall also turn on its interior lights if operable and vehicles equipped with an emergency switch for flashing all directional turnsignals simultaneously shall exhibit such turnsignals.

**Source:** Laws 1935, c. 134, § 9, p. 489; C.S.Supp.,1941, § 39-11,105; R.S.1943, § 39-7,112; Laws 1961, c. 184, § 32, p. 564; Laws 1961, c. 192, § 2, p. 590; R.R.S.1943, § 39-7,112; R.S.1943, (1988), § 39-670.01; Laws 1993, LB 370, § 316.

Evidence of violation of this section is evidence of negligence or contributory negligence. *Horst v. Johnson*, 237 Neb. 155, 465 N.W.2d 461 (1991).

Instruction on requirements of this section covered parking and lights. *Segebart v. Gregory*, 160 Neb. 64, 69 N.W.2d 315 (1955).

Prohibition against parking without lights did not apply to motor vehicle temporarily disabled. *Haight v. Nelson*, 157 Neb. 341, 59 N.W.2d 576 (1953).

It is unlawful to park automobile on highway at night without appropriate lights. *Segebart v. Gregory*, 156 Neb. 261, 55 N.W.2d 678 (1952).

Violation of this section is not negligence per se but evidence of negligence. *Anderson v. Robbins Incubator Co.*, 143 Neb. 40, 8 N.W.2d 446 (1943).

**60-6,221 Headlights; construction; adjustment; requirements.**

(1) The headlights of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in subsection (2) of this section, they will at all times mentioned in section 60-6,219 produce a driving light sufficient to render clearly discernible a person two hundred feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights.

(2) Headlights shall be deemed to comply with the provisions prohibiting glaring and dazzling lights if none of the main bright portion of the headlight beam rises above a horizontal plane passing through the light centers parallel to the level road upon which the loaded vehicle stands and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle.

**Source:** Laws 1931, c. 110, § 45, p. 320; Laws 1939, c. 78, § 5, p. 321; C.S.Supp.,1941, § 39-1176; R.S.1943, § 39-780; R.S.1943, (1988), § 39-6,140; Laws 1993, LB 370, § 317.

**1. General requirements**  
**2. Glaring or dazzling lights**  
**3. Miscellaneous**

**1. General requirements**

This section requires a driving light sufficient to render a pedestrian two hundred feet away clearly discernible. *Beck v. Trustin*, 177 Neb. 788, 131 N.W.2d 425 (1964).

Motorist has duty to have headlights throwing a beam at least two hundred feet ahead. *Bailey v. Spindler*, 161 Neb. 563, 74 N.W.2d 344 (1956).

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).

**2. Glaring or dazzling lights**

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).

**3. Miscellaneous**

Instruction on particular requirements of this section was not required. *Segebart v. Gregory*, 160 Neb. 64, 69 N.W.2d 315 (1955).

If truck had no lights burning, it violated this section. *Davis v. Spindler*, 156 Neb. 276, 56 N.W.2d 107 (1952).

Where headlights substantially fail to conform to requirements of this section, the presence of the vehicle on highway is unlawful. *Nichols v. Havlat*, 140 Neb. 723, 1 N.W.2d 829 (1942), reversed on rehearing, 142 Neb. 534, 7 N.W.2d 84 (1942).

Where driver's lights are on high beam as he approaches an unlighted truck with bulk of its body above the high beam, the failure of driver to see the truck does not necessarily constitute gross negligence. *Holberg v. McDonald*, 137 Neb. 405, 289 N.W. 542 (1940).

Failure to have head lamps complying with this section is evidence of negligence, but does not necessarily preclude recovery by guest riding in car having defective lights. *Gleason v. Baack*, 137 Neb. 272, 289 N.W. 349 (1939).

A red rear light or tail light formed no part of equipment prescribed by statute. *McGaffey v. Blosser*, 129 Neb. 371, 261 N.W. 565 (1935).

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).

**60-6,222 Violations; penalty.**

Any person who violates any provision of section 60-6,219 or 60-6,221 shall be guilty of a Class III misdemeanor. In the event of such conviction, as a part of the judgment of conviction, the trial judge shall direct the person to produce in court or submit to the prosecuting attorney, before such person again operates the motor vehicle upon a highway, satisfactory proof showing that the light equipment involved in such person's conviction has been made to conform with the requirements of such sections. The failure, refusal, or neglect of such convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which such person shall be prosecuted.

**Source:** Laws 1939, c. 78, § 9, p. 322; C.S.Supp.,1941, § 39-11,120; R.S.1943, § 39-7,126; Laws 1977, LB 41, § 13; R.S.1943, (1988), § 39-669.21; Laws 1993, LB 370, § 318.

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).

**60-6,223 Acetylene headlights; number; construction; requirements.**

Motor vehicles may be equipped with two acetylene headlights of approximately equal candlepower when equipped with clear, plain glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths-foot burners, no more and no less.

**Source:** Laws 1931, c. 110, § 46, p. 320; C.S.Supp.,1941, § 39-1177; R.S.1943, § 39-781; R.S.1943, (1988), § 39-6,142; Laws 1993, LB 370, § 319.

**60-6,224 Headlights; glare; duty of operator; penalty.**

Notwithstanding any other provision of the Nebraska Rules of the Road:

(1) Whenever any person operating a motor vehicle on any highway in this state meets another person operating a motor vehicle, proceeding in the opposite direction and equipped with headlights constructed and adjusted to project glaring or dazzling light to persons in front of such headlights, upon signal of either person, the other shall dim the headlights of his or her motor vehicle or tilt the beams of glaring or dazzling light projecting therefrom downward so as not to blind or confuse the vision of the operator in front of such headlights; and

(2) Whenever any person operating a motor vehicle on any highway in this state follows another vehicle within two hundred feet to the rear, he or she shall dim the headlights of his or her motor vehicle or tilt the beams of glaring or dazzling light projecting therefrom downward.

Any person who violates any provision of this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1931, c. 106, § 1, p. 279; C.S.Supp.,1941, § 39-1121; R.S.1943, § 39-733; Laws 1963, c. 231, § 1, p. 720; R.R.S.1943, § 39-733; Laws 1974, LB 593, § 6; Laws 1977, LB 41, § 10; R.S.1943, (1988), § 39-628.01; Laws 1993, LB 370, § 320.

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 Spotlights; auxiliary driving lights; signal lights; other devices; intensity and direction.**

(1) Any motor vehicle may be equipped with spotlights as specified in section 60-6,219, and every lighted spotlight shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed to the left of the center of the highway nor more than one hundred feet ahead of the vehicle.

(2) Any motor vehicle may be equipped with not to exceed two auxiliary driving lights mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface on which the vehicle stands, and every such auxiliary driving light shall meet the requirements and limitations set forth in section 60-6,221. The restrictions on mounting height provided in this subsection shall not apply to any motor vehicle equipped with a blade, plow, or any other device designed for the movement of snow. Auxiliary driving lights shall be turned off at the same time the motor vehicle's headlights are

required to be dimmed when approaching another vehicle from either the front or the rear.

(3) Whenever a motor vehicle is equipped with a signal light, the signal light shall be so constructed and located on the vehicle as to give a signal which shall be plainly visible in normal sunlight from a distance of one hundred feet to the rear of the vehicle but shall not project a glaring or dazzling light.

(4) Any device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candlepower shall 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 fifty feet from the vehicle.

**Source:** Laws 1931, c. 110, § 44, p. 319; C.S.Supp.,1941, § 39-1175; R.S.1943, § 39-779; Laws 1957, c. 366, § 7, p. 1251; Laws 1961, c. 192, § 1, p. 589; R.R.S.1943, § 39-779; Laws 1978, LB 816, § 1; Laws 1981, LB 544, § 3; Laws 1987, LB 224, § 7; R.S.1943, (1988), § 39-6,139; Laws 1993, LB 370, § 321; Laws 1995, LB 59, § 3.

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).

**60-6,226 Brake and turnsignal light requirements; exceptions; signaling requirements.**

(1) Any motor vehicle having four or more wheels which is manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, any autocycle, or any trailer, in use on a highway, shall be equipped with brake and turnsignal lights in good working order.

(2) Motorcycles other than autocycles, motor-driven cycles, motor scooters, bicycles, electric personal assistive mobility devices, vehicles used solely for agricultural purposes, vehicles not designed and intended primarily for use on a highway, and, during daylight hours, fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations shall not be required to have or maintain in working order signal lights required by this section, but they may be so equipped. The operator thereof shall comply with the requirements for utilizing hand and arm signals or for utilizing such signal lights if the vehicle is so equipped.

**Source:** Laws 1993, LB 370, § 322; Laws 1995, LB 59, § 4; Laws 2002, LB 1105, § 458; Laws 2003, LB 238, § 6; Laws 2005, LB 274, § 243; Laws 2015, LB231, § 32; Laws 2018, LB909, § 99.

**Cross References**

Hand and arm signals, see sections 60-6,162 and 60-6,163.

**60-6,227 Repealed. Laws 2008, LB 756, § 34.**

**60-6,228 Vehicle proceeding in forward motion; backup lights on; prohibited; violation; penalty.**

No vehicle shall be operated while proceeding in a forward motion with the backup lights on when the vehicle is being operated on the highways. Any person who violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1969, c. 327, § 8, p. 1172; R.S.Supp.,1972, § 39-788.07; R.S.1943, (1988), § 39-6,154; Laws 1993, LB 370, § 324.

**60-6,229 Lights, red or green, in front of vehicle prohibited; exceptions.**

Except as provided in sections 60-6,230 to 60-6,233, it shall be unlawful for any person to drive or move any vehicle upon a highway with any red or green light thereon visible from directly in front thereof. This section shall not apply to police or fire department or fire patrol vehicles or school buses.

**Source:** Laws 1931, c. 110, § 49, p. 323; C.S.Supp.,1941, § 39-1180; R.S.1943, § 39-788; Laws 1969, c. 327, § 1, p. 1170; R.S.Supp.,1972, § 39-788; R.S.1943, (1988), § 39-6,147; Laws 1993, LB 370, § 325.

**60-6,230 Lights; rotating or flashing; colored lights; when permitted.**

(1) Except as provided in this section and sections 60-6,231 to 60-6,233, no person shall operate any motor vehicle or any equipment of any description on any highway in this state with any rotating or flashing light.

(2) Except for stop lights and directional signals, which may be red, yellow, or amber, no person shall display any color of light other than red on the rear of any motor vehicle or any equipment of any kind on any highway within this state.

(3) Amber rotating or flashing lights shall be displayed on vehicles of the Military Department for purpose of convoy control when on any state emergency mission.

(4) A single flashing white light may be displayed on the roof of school transportation vehicles during extremely adverse weather conditions.

(5) Blue and amber rotating or flashing lights may be displayed on (a) vehicles when operated by the Department of Transportation or any local authority for the inspection, construction, repair, or maintenance of highways, roads, or streets or (b) vehicles owned and operated by any public utility for the construction, maintenance, and repair of utility infrastructure on or near any highway.

**Source:** Laws 1969, c. 327, § 2, p. 1170; R.S.Supp.,1972, § 39-788.01; Laws 1979, LB 127, § 1; R.S.1943, (1988), § 39-6,148; Laws 1993, LB 370, § 326; Laws 1995, LB 59, § 6; Laws 2008, LB196, § 3; Laws 2015, LB181, § 1; Laws 2016, LB977, § 24; Laws 2017, LB339, § 217.

The use of hazard lights while driving is proscribed by the plain language of subsection (1) of this section. *State v. Warren*, 267 Neb. 424, 675 N.W.2d 112 (2004).

**60-6,231 Flashing or rotating lights; authorized emergency vehicles; colors permitted.**

A flashing or rotating red light or red and white light shall be displayed on any authorized emergency vehicle whenever operated in this state. A blue light may also be displayed with such flashing or rotating red light or red and white

light. For purposes of this section, an authorized emergency vehicle shall include funeral escort vehicles.

**Source:** Laws 1969, c. 327, § 3, p. 1171; R.S.Supp.,1972, § 39-788.02; Laws 1989, LB 416, § 1; R.S.Supp.,1992, § 39-6,149; Laws 1993, LB 370, § 327; Laws 2008, LB196, § 4.

**60-6,232 Rotating or flashing amber light; when permitted.**

A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corporate limits of any municipality in this state on or near any highway in the process of delivering mail.

A rotating or flashing amber light or lights may be displayed on (1) any vehicle of the Military Department while on any state emergency mission, (2) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance vehicle while performing its duties on or near any highway, (3) any motor vehicle being operated by any member of the Civil Air Patrol, (4) any pilot vehicle escorting an overdimensional load, (5) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary bulk, including unbaled livestock forage as authorized by subdivision (2)(f) of section 60-6,288, (6) any motor vehicle owned by or operated on behalf of a railroad carrier that is stopped to load or unload passengers, or (7) any motor vehicle operated by or for an emergency management worker as defined in section 81-829.39 or a storm spotter as defined in section 81-829.67 who is activated by a local emergency management organization.

**Source:** Laws 1969, c. 327, § 4, p. 1171; Laws 1971, LB 365, § 1; R.S.Supp.,1972, § 39-788.03; Laws 1977, LB 427, § 1; R.S.1943, (1988), § 39-6,150; Laws 1993, LB 370, § 328; Laws 1995, LB 59, § 7; Laws 2000, LB 1361, § 4; Laws 2005, LB 471, § 1; Laws 2011, LB573, § 1.

**60-6,233 Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.**

(1)(a) A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle operated by any volunteer firefighter, peace officer, or physician medical director anywhere in this state while actually en route to the scene of a fire or other emergency requiring his or her services as a volunteer firefighter, peace officer, or physician medical director, but only after its use has been authorized in writing by the county sheriff and, with respect to a physician medical director, such person has successfully completed an emergency vehicle operator course.

(b) Application for a permit to display such light shall be made in writing to the sheriff on forms to be prescribed and furnished by the Superintendent of Law Enforcement and Public Safety. The application shall be accompanied by a statement that the applicant is a volunteer firefighter, peace officer, or physician medical director and is requesting issuance of the permit. The statement shall be signed by the applicant's superior.



(c) The permit shall be carried at all times in the vehicle named in the permit. Each such permit shall expire on December 31 of each year and shall be renewed in the same manner as it was originally issued.

(d) The sheriff may at any time revoke such permit upon a showing of abuse thereof or upon receipt of notice from the applicant's superior that the holder thereof is no longer an active volunteer firefighter, peace officer, or physician medical director. Any person whose permit has been so revoked shall upon demand surrender it to the sheriff or his or her authorized agent.

(2) A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle being used by rescue squads actually en route to, at, or returning from any emergency requiring their services, or by any privately owned wrecker when engaged in emergency services at the scene of an accident, or at a disabled vehicle, located outside the city limits of a city of the metropolitan or primary class, but only after its use has been authorized in writing by the county sheriff. Applications shall be made and may be revoked in the same manner as for volunteer firefighters as provided in subsection (1) of this section.

(3) For purposes of this section, physician medical director has the same meaning as in section 38-1210.

**Source:** Laws 1969, c. 327, § 5, p. 1171; Laws 1971, LB 365, § 2; R.S.Supp.,1972, § 39-788.04; Laws 1981, LB 64, § 2; Laws 1989, LB 416, § 2; R.S.Supp.,1992, § 39-6,151; Laws 1993, LB 370, § 329; Laws 2019, LB8, § 1.

**60-6,234 Rotating or flashing lights; violation; penalty.**

Any person who violates any provision of sections 60-6,230 to 60-6,233 shall be guilty of a Class III misdemeanor and shall also be ordered to remove from any vehicle or equipment any light found to be in violation of such sections.

**Source:** Laws 1969, c. 327, § 6, p. 1172; R.S.Supp.,1972, § 39-788.05; Laws 1977, LB 41, § 23; R.S.1943, (1988), § 39-6,152; Laws 1993, LB 370, § 330.

**60-6,235 Clearance lights; requirements; substitution; violations; penalty.**

Every vehicle, including road rollers, road machinery, combines, farm machinery, wagons, racks, and farm tractors, (1) having a width, including load, of eighty inches or more or (2) having any part thereof or having any load thereupon which extends forty inches or more to the left of the center of the chassis shall display, when driven, pulled, operated, or propelled upon any highway during the period from sunset to sunrise and at all other times when there is not sufficient light to render such vehicle clearly discernible, two clearance lights on the left side of such vehicle.

One clearance light shall be located at the front and display an amber light which is visible, under normal atmospheric conditions, from a distance of three hundred feet to the front of such vehicle. The other clearance light shall be located at the rear and display a red light which is visible, under normal atmospheric conditions, from a distance of three hundred feet to the rear of the vehicle. The light at the rear shall be so located as not to be confused with the taillight by those approaching from the rear.

Such lights shall be located on a line with the extreme outer point of such vehicle or the load on the vehicle. The installation of the lights shall be made in such a manner that no hazard will be created by their use on the highway.

Suitable reflectors of like color and equal visibility may be substituted for such clearance lights.

Any person who violates any provision of this section shall be guilty of a Class III misdemeanor. In the event of such a conviction, as part of the judgment of conviction, the trial judge shall direct the person to produce in court or submit to the prosecuting attorney, before such person again operates the vehicle upon a highway, satisfactory proof showing that the light equipment involved in the person's conviction has been made to conform with the requirements of this section. The failure, refusal, or neglect of the convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which the person shall be prosecuted.

**Source:** Laws 1931, c. 106, § 2, p. 280; Laws 1939, c. 78, § 3, p. 319; C.S.Supp.,1941, § 39-1122; R.S.1943, § 39-735; Laws 1945, c. 92, § 1, p. 314; Laws 1949, c. 117, § 1, p. 313; Laws 1953, c. 131, § 13, p. 409; Laws 1955, c. 152, § 2, p. 452; Laws 1957, c. 366, § 3, p. 1246; R.R.S.1943, § 39-735; Laws 1977, LB 211, § 2; Laws 1977, LB 393, § 1; Laws 1987, LB 224, § 4; R.S.1943, (1988), § 39-6,127; Laws 1993, LB 370, § 331; Laws 1993, LB 575, § 27.

Clearance lights are required at both front and rear of vehicle. *Egenberger v. National Alfalfa Dehydrating & Milling Co.*, 164 Neb. 704, 83 N.W.2d 523 (1957).

Truck was required to have clearance lights turned on and operating. *Guerin v. Forburger*, 161 Neb. 824, 74 N.W.2d 870 (1956).

Where headlights on motor vehicle are insufficient to make highway signals of a railroad crossing visible from cab of truck

before running into it, guest riding in motor vehicle without protest cannot recover from railroad company. *Fischer v. Megan*, 138 Neb. 420, 293 N.W. 287 (1940).

Failure to comply with statutory requirements is not actionable negligence as matter of law, but may be considered with other facts tending to establish negligence. *LaFleur v. Poesch*, 126 Neb. 263, 252 N.W. 902 (1934).

**60-6,236 Vehicles required to have clearance lights; flares; reflectors; when required as equipment.**

Any vehicle required by section 60-6,235 to have clearance lights, while operating on the highways during the period from sunset to sunrise, shall at all times be equipped with at least three portable flares, or red emergency reflectors referred to in section 60-6,237, which may be plainly visible for a distance of five hundred feet.

**Source:** Laws 1935, c. 129, § 1, p. 460; C.S.Supp.,1941, § 39-11,112; R.S.1943, § 39-7,118; Laws 1949, c. 121, § 1(1), p. 318; Laws 1961, c. 193, § 1, p. 591; R.R.S.1943, § 39-7,118; R.S.1943, (1988), § 39-6,162; Laws 1993, LB 370, § 332; Laws 1993, LB 575, § 33.

Where truck was left on highway after dark without flares, there was evidence of negligence. *Plumb v. Burnham*, 151 Neb. 129, 36 N.W.2d 612 (1949).

Violation of this section may constitute manslaughter. *Vaca v. State*, 150 Neb. 516, 34 N.W.2d 873 (1948).

Passenger car, with trailer attached, does not come within class of vehicles required to be equipped with flares. *Anderson v. Robbins Incubator Co.*, 143 Neb. 40, 8 N.W.2d 446 (1943).

Charges of negligence of bus company in blocking highway should have been submitted to jury, together with question of whether under such circumstances agent was negligent in the manner of giving signals. *McClelland v. Interstate Transit Lines*, 142 Neb. 439, 6 N.W.2d 384 (1942).

Evidence of failure to set up flares, together with other acts of negligence, was sufficient to make case for jury. *Grantham v. Watson Bros. Transp. Co.*, 142 Neb. 362, 6 N.W.2d 372 (1942).

**60-6,237 Vehicles required to have clearance lights; flares; reflectors; how and when displayed.**

The operator of any vehicle required by section 60-6,235 to have clearance lights shall, immediately upon bringing his or her vehicle to a stop upon or immediately adjacent to the traveled portion of the highway at any time during the period from sunset to sunrise, (1) place one lighted flare or one red emergency reflector at the side of such vehicle just inside the white line marking the center of paved highways and near the center of dirt or gravel highways, (2) place one lighted flare or one red emergency reflector approximately one hundred feet to the rear of such vehicle, and (3) place one lighted flare or one red emergency reflector approximately one hundred feet to the front of such vehicle. The operator shall maintain such lighted flares or red emergency reflectors in such positions during the time such vehicle remains parked, except that motor vehicles transporting flammables shall be required to use two flares or two red emergency reflectors to be placed as described in this section to the front and rear but shall not be permitted to place open flame flares adjacent to such vehicles.

**Source:** Laws 1935, c. 129, § 1, p. 460; C.S.Supp.,1941, § 39-11,112; R.S.1943, § 39-7,118; Laws 1949, c. 121, § 1(2), p. 319; Laws 1957, c. 366, § 23, p. 1259; Laws 1961, c. 189, § 4, p. 581; Laws 1961, c. 193, § 2, p. 592; Laws 1961, c. 181, § 5, p. 538; R.R.S.1943, § 39-7,118.01; Laws 1987, LB 224, § 11; R.S.1943, (1988), § 39-6,163; Laws 1993, LB 370, § 333; Laws 1993, LB 575, § 34.

The term immediately, as used in this section, means with reasonable and prompt diligence, under all of the facts and circumstances shown. *Gleason v. Baack*, 137 Neb. 272, 289 N.W. 349 (1939).

**60-6,238 Vehicles; red flags; red emergency reflectors; when required as equipment; how and when displayed.**

(1) Except as provided in subsection (2) of this section, between one-half hour before sunrise and one-half hour after sunset, any vehicle described in section 60-6,236 shall be equipped with two red flags, and when the vehicle is parked, one flag shall be placed one hundred feet behind and the other one hundred feet ahead of such vehicle and in such position as to be visible to all approaching traffic during the daylight hours.

(2) In lieu of the requirements of subsection (1) of this section, such a vehicle may be equipped with three red emergency reflectors. One of the reflectors shall be placed alongside the vehicle on the traffic side and within ten feet of the front or rear of the vehicle. When there is two-way traffic, one reflector shall be placed one hundred feet ahead of the vehicle and one shall be placed one hundred feet behind the vehicle. When there is only one-way traffic, one reflector shall be placed one hundred feet and one two hundred feet behind the vehicle.

**Source:** Laws 1935, c. 129, § 2, p. 460; Laws 1941, c. 77, § 1, p. 313; C.S.Supp.,1941, § 39-11,113; R.S.1943, § 39-7,119; Laws 1977, LB 393, § 2; Laws 1987, LB 224, § 12; R.S.1943, (1988), § 39-6,164; Laws 1993, LB 370, § 334.

Where truck was left parked on highway in daytime without flags, there was evidence of negligence. *Plumb v. Burnham*, 151 Neb. 129, 36 N.W.2d 612 (1949).

**60-6,239 Clearance lights, flares, and reflector requirements; violations; penalty.**

Any person who violates any provision of sections 60-6,236 to 60-6,238 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1935, c. 129, § 5, p. 461; C.S.Supp.,1941, § 39-11,116; R.S.1943, § 39-7,120; Laws 1977, LB 41, § 26; R.S.1943, (1988), § 39-6,165; Laws 1993, LB 370, § 335.

**60-6,240 Removing flares or flags; penalty.**

Any person who willfully removes any flares or red flags placed upon the highways under the provisions of sections 60-6,236 to 60-6,238 before the driver of such vehicle is ready to proceed immediately on the highway shall be guilty of a Class V misdemeanor.

**Source:** Laws 1935, c. 129, § 6, p. 461; C.S.Supp.,1941, § 39-11,117; R.S.1943, § 39-7,121; Laws 1977, LB 41, § 27; R.S.1943, (1988), § 39-6,166; Laws 1993, LB 370, § 336.

**60-6,241 Vehicles; slow moving; emblem required; when used.**

(1) It shall be unlawful for any person to operate on the roadway of any highway any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery, designed for use at speeds less than twenty-five miles per hour, including all road construction or maintenance machinery except when engaged in actual construction or maintenance work either guarded by a flagperson or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five miles per hour unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (2) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law. The emblem shall not be displayed on objects which are customarily stationary in use except while being transported on the roadway of any highway.

(2) The emblem shall be of substantial construction and shall be a base-down equilateral triangle of fluorescent yellow-orange film with a base of fourteen inches and an altitude of twelve inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen inches. The emblem shall comply with the current standards and specifications for slow-moving vehicle emblems of the American Society of Agricultural Engineers. Such emblem shall be mounted on the rear of such vehicle at a height of two to six feet above the roadway and shall be maintained in a clean, reflective condition. This section shall not apply to an electric personal assistive mobility device.

**Source:** Laws 1965, c. 210, § 1, p. 618; Laws 1967, c. 230, § 1, p. 607; R.R.S.1943, § 39-723.10; Laws 1977, LB 211, § 1; R.S.1943, (1988), § 39-6,125; Laws 1993, LB 370, § 337; Laws 1993, LB 575, § 26; Laws 2002, LB 1105, § 462.

**60-6,242 Vehicles; slow moving; equipped with bracket.**

All vehicles, equipment, or machinery sold in this state and required to display the emblem provided for in section 60-6,241 shall be equipped with a bracket on which such emblem may be mounted.

**Source:** Laws 1967, c. 230, § 2, p. 607; R.R.S.1943, § 39-723.11; R.S. 1943, (1988), § 39-6,126; Laws 1993, LB 370, § 338.

**60-6,243 Load projecting to rear; red flag or red light required.**

Whenever the load on any vehicle extends more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load in such position as to be clearly visible at all times from the rear of such load a red flag not less than twelve inches both in length and width, except that between sunset and sunrise, there shall be displayed at the end of any such load a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear of such vehicle.

**Source:** Laws 1931, c. 110, § 34, p. 316; C.S.Supp.,1941, § 39-1165; R.S.1943, § 39-769; R.S.1943, (1988), § 39-6,130; Laws 1993, LB 370, § 339; Laws 1993, LB 575, § 29.

Failure of driver to display lights on overhanging load when it is dark, as required by law, is evidence of negligence. *Moore v. Nisley*, 133 Neb. 474, 275 N.W. 827 (1937). A failure to comply with requirements of this section is not negligence per se, but is evidence of negligence. *LaFleur v. Poesch*, 126 Neb. 263, 252 N.W. 902 (1934).

## (r) BRAKES

**60-6,244 Motor vehicles; brakes; requirements.**

(1) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels and so constructed that no part which is liable to failure shall be common to the two, except that a motorcycle shall be required to be equipped with only one brake. All such brakes shall be maintained at all times in good working order.

(2) It shall be unlawful for any owner or operator of any motor vehicle, other than a motorcycle, to operate such motor vehicle upon a highway unless the brake equipment thereon qualifies with regard to maximum stopping distances from a speed of twenty miles per hour on dry asphalt or concrete pavement free from loose materials as follows:

- (a) Two-wheel brakes, maximum stopping distance, forty feet;
- (b) Four or more wheel brakes, vehicles up to seven thousand pounds gross weight, maximum stopping distance, thirty feet;
- (c) Four or more wheel brakes, vehicles seven thousand pounds or more gross weight, maximum stopping distance, thirty-five feet;
- (d) All hand, parking, or emergency brakes, vehicles up to seven thousand pounds gross weight, maximum stopping distance, fifty-five feet; and
- (e) All hand, parking, or emergency brakes, vehicles seven thousand pounds or more gross weight, maximum stopping distance, sixty-five feet.

(3) All braking distances specified in this section shall apply to all vehicles whether unloaded or loaded to the maximum capacity permitted by law.

(4) The retarding force of one side of the vehicle shall not exceed the retarding force on the opposite side so as to prevent the vehicle stopping in a straight line.

(5) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1931, c. 110, § 38, p. 317; Laws 1939, c. 78, § 2, p. 318; C.S.Supp.,1941, § 39-1169; R.S.1943, § 39-773; Laws 1977, LB 314, § 2; R.S.1943, (1988), § 39-6,133; Laws 1993, LB 370, § 340; Laws 2018, LB909, § 100.

Under circumstances in this case, defendant was guilty of negligence as a matter of law for failure to utilize second braking system when first failed. *Ritchie v. Davidson*, 183 Neb. 94, 158 N.W.2d 275 (1968).

Condition of brakes, even if defective, was not a proximate cause of accident. *Odom v. Willms*, 177 Neb. 699, 131 N.W.2d 140 (1964).

Violation of this section was not negligence as matter of law and plaintiff had burden of proving negligence and proximate cause. *Starns v. Jones*, 500 F.2d 1233 (8th Cir. 1974).

### **60-6,245 Violations; penalties.**

Any person who violates any provision of section 60-6,244 shall be guilty of a Class III misdemeanor. In the event of such conviction, as a part of the judgment of conviction, the trial judge shall direct the person so convicted to produce in court or submit to the prosecuting attorney, before such person again operates the motor vehicle upon a highway, satisfactory proof showing that the brake equipment involved in the person's conviction has been made to conform with the requirements of such section. The failure, refusal, or neglect of the convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which the person shall be prosecuted.

**Source:** Laws 1993, LB 370, § 341.

### **60-6,246 Trailers; brake requirements; safety chains; when required.**

(1) All commercial trailers with a carrying capacity of more than ten thousand pounds and semitrailers shall be equipped on each wheel with brakes that can be operated from the driving position of the towing vehicle.

(2) Cabin trailers and recreational trailers having a gross loaded weight of three thousand pounds or more but less than six thousand five hundred pounds shall be equipped with brakes on at least two wheels, and such trailers with a gross loaded weight of six thousand five hundred pounds or more shall be equipped with brakes on each wheel. The brakes shall be operable from the driving position of the towing vehicle. Such trailers shall also be equipped with a breakaway, surge, or impulse switch on the trailer so that the trailer brakes are activated if the trailer becomes disengaged from the towing vehicle.

(3) Cabin trailers, recreational trailers, and utility trailers, when being towed upon a highway, shall be securely connected to the towing vehicle by means of two safety chains or safety cables in addition to the hitch or other primary connecting device. Such safety chains or safety cables shall be so attached and shall be of sufficient breaking load strength so as to prevent any portion of such trailer drawbar from touching the roadway if the hitch or other primary connecting device becomes disengaged from the towing vehicle.

(4) For purposes of this section:

(a) Recreational trailer means a vehicular unit without motive power primarily designed for transporting a motorboat as defined in section 37-1204 or a vessel as defined in section 37-1203; and

(b) Utility trailer has the same meaning as in section 60-358.

**Source:** Laws 1959, c. 165, § 2, p. 604; Laws 1972, LB 1164, § 1; Laws 1973, LB 368, § 1; R.S.Supp.,1972, § 39-773.01; Laws 1989, LB 695, § 2; R.S.Supp.,1992, § 39-6,134; Laws 1993, LB 370, § 342; Laws 1993, LB 575, § 30; Laws 1995, LB 6, § 1; Laws 2005, LB 274, § 244.

**60-6,247 Trucks and buses; brake requirements; violation; penalty.**

It shall be unlawful for any person to operate or cause to be operated on the highways in the State of Nebraska buses or trucks having a gross weight of the truck and load exceeding twelve thousand pounds unless such bus or truck is equipped with power brakes, auxiliary brakes, or some standard booster brake equipment. Any person who violates this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1935, c. 134, § 10, p. 489; C.S.Supp.,1941, § 39-11,106; R.S.1943, § 39-7,113; Laws 1974, LB 593, § 8; Laws 1977, LB 41, § 25; R.S.1943, (1988), § 39-6,161; Laws 1993, LB 370, § 343; Laws 1993, LB 121, § 206; Laws 1994, LB 884, § 80.

In order to constitute evidence of negligence, failure to have auxiliary brake equipment must have some causal relation between violation of this section and an accident. *Herman v. Firestone*, 146 Neb. 730, 21 N.W.2d 444 (1946).

When petition charges negligence in that defendant failed to have truck equipped with proper brakes, the evidence must sustain such allegations. *Knoche v. Pease Grain & Seed Co.*, 134 Neb. 130, 277 N.W. 798 (1938).

**60-6,248 Hydraulic brake fluids; requirements; violation; penalty.**

In order to promote highway safety by providing the public with safe and efficient hydraulic fluids for motor vehicle braking systems, it shall be unlawful for any person to sell, offer to sell, or display for sale any hydraulic fluids for use in motor vehicle braking systems that do not equal or exceed the specifications for types SAE 70R1 or SAE 70R3 brake fluids as set forth in 49 C.F.R. 571.116.

Any person who violates this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1963, c. 217, § 1, p. 689; R.R.S.1943, § 39-7,123.06; R.S. 1943, (1988), § 39-6,172; Laws 1993, LB 370, § 344.

## (s) TIRES

**60-6,249 Pneumatic tires; when required.**

The wheels of all vehicles, including trailers, except vehicles operated at twenty miles per hour or less, shall be equipped with pneumatic tires.

**Source:** Laws 1993, LB 370, § 345.

**60-6,250 Tires; requirements; cleats or projections prohibited; exceptions; permissive uses; special permits; exceptions.**

(1) Every solid rubber tire on a vehicle moved on any highway shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(2) No tire on a vehicle moved on a highway shall have on its periphery any clock, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that:

(a) This prohibition shall not apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths of an inch in diameter inclusive of the stud-casing with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch between November 1 and April 1, except that school buses, mail carrier vehicles, and emergency vehicles shall be permitted to use metal or metal-type studs at any time during the year;

(b) It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; and

(c) It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid.

(3) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer (a) having any metal tire in contact with the roadway or (b) equipped with solid rubber tires, except that this subsection shall not apply to farm vehicles having a gross weight of ten thousand pounds or less or to implements of husbandry.

(4) The Department of Transportation and local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery.

**Source:** Laws 1931, c. 110, § 36, p. 317; C.S.Supp.,1941, § 39-1167; R.S.1943, § 39-771; Laws 1965, c. 217, § 1, p. 633; Laws 1971, LB 678, § 2; R.S.Supp.,1972, § 39-771; Laws 1980, LB 619, § 3; Laws 1983, LB 50, § 1; Laws 1987, LB 504, § 3; R.S.1943, (1988), § 39-6,131; Laws 1993, LB 370, § 346; Laws 2017, LB339, § 218.

**60-6,251 Pneumatic tires; regrooving prohibited; exception.**

(1) No person shall alter the traction surface of pneumatic tires by regrooving.

(2) No person shall knowingly operate on any highway in this state any motor vehicle on which the traction surface of any pneumatic tire thereof has been regrooved. No person shall sell, exchange, or offer for sale or exchange such a tire.

(3) This section shall not apply to regrooved commercial vehicle tires which are designed and constructed in such a manner that any regrooving complies with the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363.

**Source:** Laws 1987, LB 504, § 4; R.S.1943, (1988), § 39-6,131.08; Laws 1993, LB 370, § 347; Laws 2006, LB 1007, § 10.

**60-6,252 Tire condition; requirements.**

(1) No person shall drive or move a motor vehicle on any highway unless such vehicle is equipped with tires in safe operating condition in accordance with subsection (2) of this section.

(2) A tire shall be considered unsafe if it has:

(a) Any bump, bulge, or knot affecting the tire structure;

(b) A break which exposes a tire body cord or is repaired with a boot or patch;

(c) A tread depth of less than two thirty-seconds of an inch measured in any two tread grooves at three locations equally spaced around the circumference of the tire or, on those tires with tread wear indicators, been worn to the point that the tread wear indicators contact the road in any two tread grooves at



three locations equally spaced around the circumference of the tire, except that this subdivision shall not apply to truck tires with ten or more cord plies which are mounted on dual wheels; or

(d) Such other conditions as may be reasonably demonstrated to render the tire unsafe.

(3) No tire shall be used on any motor vehicle which is driven or moved on any highway in this state if such tire was designed or manufactured for nonhighway use.

(4) No person shall destroy, alter, or deface any marking on a new or usable tire which indicates whether the tire has been manufactured for highway or nonhighway use.

(5) No person shall sell any motor vehicle for highway use unless the vehicle is equipped with tires that are in compliance with this section.

**Source:** Laws 1987, LB 504, § 5; R.S.1943, (1988), § 39-6,131.09; Laws 1993, LB 370, § 348.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

**60-6,253 Trucks; rearview mirror.**

Each truck shall be equipped with a rearview mirror which shall be kept clean, repaired, and installed.

**Source:** Laws 1933, c. 105, § 5, p. 426; Laws 1939, c. 47, § 1, p. 208; Laws 1941, c. 125, § 2, p. 481; C.S.Supp.,1941, § 39-1193; R.S. 1943, § 39-723; Laws 1947, c. 147, § 2(5), p. 406; R.R.S.1943, § 39-723.04; R.S.1943, (1988), § 39-6,123; Laws 1993, LB 370, § 349; Laws 1993, LB 575, § 25.

**60-6,254 Operator; view to rear required; outside mirrors authorized.**

(1) No person shall drive a motor vehicle, other than a motorcycle, on a highway when the motor vehicle is so constructed or loaded as to prevent the driver from obtaining a view of the highway to the rear by looking backward from the driver's position unless such vehicle is equipped with a right-side and a left-side outside mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. Temporary outside mirrors and attachments used when towing a vehicle shall be removed from such motor vehicle or retracted within the outside dimensions thereof when it is operated upon the highway without such trailer.

(2) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1931, c. 110, § 40, p. 318; C.S.Supp.,1941, § 39-1171; R.S.1943, § 39-775; Laws 1971, LB 396, § 3; R.S.Supp.,1972, § 39-775; Laws 1977, LB 314, § 1; R.S.1943, (1988), § 39-6,124; Laws 1993, LB 370, § 350; Laws 2018, LB909, § 101.

**60-6,255 Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.**

(1) Every motor vehicle registered pursuant to the Motor Vehicle Registration Act, except motorcycles, shall be equipped with a front windshield.

(2) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster, or other nontransparent material upon the front windshield, side wing vents, or side or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law. The front windshield, side wing vents, and side or rear windows may have a visor or other shade device which is easily moved aside or removable, is normally used by a motor vehicle operator during daylight hours, and does not impair the driver's field of vision.

(3) Every windshield on a motor vehicle, other than a motorcycle, shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(4) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1931, c. 110, § 41, p. 318; C.S.Supp.,1941, § 39-1172; R.S.1943, § 39-776; Laws 1977, LB 314, § 3; Laws 1987, LB 504, § 7; Laws 1989, LB 155, § 1; R.S.Supp.,1992, § 39-6,136; Laws 1993, LB 370, § 351; Laws 2005, LB 274, § 245; Laws 2018, LB909, § 102.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

Officer properly stopped vehicle bearing both Missouri plates and intransit sticker, and when driver failed to produce identification, and upon noticing scratches around vehicle identification number checked to determine whether vehicle was stolen, upon learning it was, was justified in making arrest. *United States v. Harris*, 528 F.2d 1327 (8th Cir. 1975).

**60-6,256 Objects placed or hung to obstruct or interfere with view of operator; unlawful; enforcement; penalty.**

(1) It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the motor vehicle, except required or permitted equipment of the motor vehicle, in such a manner as to significantly and materially obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind the motor vehicle. Any sticker or identification authorized or required by the federal government or any agency thereof or the State of Nebraska or any political subdivision thereof may be placed upon the windshield of the motor vehicle without violating this section.

(2) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(3) Any person who violates this section is guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

- (a) Fifty dollars for the first offense;
- (b) One hundred dollars for a second offense; and
- (c) One hundred fifty dollars for a third and subsequent offense.

**Source:** Laws 1959, c. 173, § 1, p. 624; R.R.S.1943, § 39-7,123.04; Laws 1977, LB 41, § 30; R.S.1943, (1988), § 39-6,170; Laws 1993, LB 370, § 352; Laws 2011, LB500, § 2.

## Cross References

Interference with view of driver by passengers or load prohibited, see section 60-6,179.

**60-6,257 Windshield and windows; tinting; suncreening; prohibited acts; terms, defined.**

(1) It shall be unlawful for a person to drive a motor vehicle required to be registered in this state upon a highway:

(a) If the windows in such motor vehicle are tinted so that the driver's clear view through the windshield or side or rear windows is reduced or the ability to see into the motor vehicle is substantially impaired;

(b) If the windshield has any sunscreening material that is not clear and transparent below the AS-1 line or if it has a suncreening material that is red, yellow, or amber in color above the AS-1 line;

(c) If the front side windows have any sunscreening or other transparent material that has a luminous reflectance of more than thirty-five percent or has light transmission of less than thirty-five percent;

(d) If the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than thirty-five percent or has light transmission of less than twenty percent except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(e) If the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 C.F.R. 571.205.

(2) For purposes of this section and sections 60-6,258 and 60-6,259:

(a) AS-1 line shall mean a line extending from the letters AS-1, found on most motor vehicle windshields, running parallel to the top of the windshield or shall mean a line five inches below and parallel to the top of the windshield, whichever is closer to the top of the windshield;

(b) Camper shall mean a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle with motive power for the purpose of providing shelter for persons;

(c) Glass-plastic glazing material shall mean a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle;

(d) Light transmission shall mean the ratio of the amount of total light, expressed in percentages, which is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window;

(e) Luminous reflectance shall mean the ratio of the amount of total light, expressed in percentages, which is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window;

(f) Motor home shall mean a multipurpose passenger vehicle that provides living accommodations;

(g) Multipurpose vehicle shall mean a motor vehicle designed to carry ten or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use;

(h) Pickup cover shall mean a camper having a roof and sides but without a floor designated to be mounted on and removable from the cargo area of a truck by the user;

(i) Slide-in camper shall mean a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user; and

(j) Sunscreening material shall mean a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

**Source:** Laws 1989, LB 155, § 2; Laws 1990, LB 1119, § 1; R.S.Supp.,1992, § 39-6,136.01; Laws 1993, LB 370, § 353.

**60-6,258 Windshield and windows; violations; penalty.**

Any person owning or operating a motor vehicle in violation of section 60-6,257 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1989, LB 155, § 3; R.S.Supp.,1992, § 39-6,136.02; Laws 1993, LB 370, § 354.

**60-6,259 Windshield and windows; applicator; prohibited acts; penalty.**

Any person who applies a sunscreening material or a glass-plastic glazing material in a manner which results in a motor vehicle having a window which violates the requirements prescribed in subsection (1) of section 60-6,257 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 155, § 4; R.S.Supp.,1992, § 39-6,136.03; Laws 1993, LB 370, § 355.

**60-6,260 Windshield and windows; waiver of standards; conditions.**

The Nebraska State Patrol or local law enforcement agency may grant a waiver of the standards in section 60-6,257 for reasons of safety or security or for medical reasons based on an affidavit signed by a licensed physician. Such waiver shall be in writing and shall include the date issued, the vehicle identification number, the registration number, or other description to clearly identify the motor vehicle to which the waiver applies, the name of the owner of the vehicle, the reason for granting the waiver, the dates the waiver will be effective, and the signature of the head of the law enforcement agency granting the waiver. Such agency shall keep a copy of the waiver until the waiver expires.

**Source:** Laws 1989, LB 155, § 5; R.S.Supp.,1992, § 39-6,136.04; Laws 1993, LB 370, § 356.

**60-6,261 Windshield and windows; funeral vehicles; exception.**

Sections 60-6,257 to 60-6,259 shall not apply to the side or rear windows of funeral coaches, hearses, or other vehicles operated in the normal course of business by a funeral establishment licensed under section 38-1419.

**Source:** Laws 1989, LB 155, § 6; R.S.Supp.,1992, § 39-6,136.05; Laws 1993, LB 370, § 357; Laws 2007, LB463, § 1175.

**60-6,262 Safety glass, defined.**

For purposes of section 60-6,263, safety glass shall mean any product composed of glass or such other or similar products as will successfully withstand discoloration due to exposure to sunlight or abnormal temperatures over an extended period of time and is so manufactured, fabricated, or treated as substantially to prevent or reduce in comparison with ordinary sheet glass or plate glass, when struck or broken, the likelihood of injury to persons.

**Source:** Laws 1933, c. 101, § 3, p. 413; Laws 1937, c. 145, § 3, p. 554; C.S.Supp.,1941, § 39-1196; R.S.1943, § 39-7,102; Laws 1972, LB 1058, § 3; R.S.Supp.,1972, § 39-7,102; Laws 1987, LB 224, § 8; R.S.1943, (1988), § 39-6,156; Laws 1993, LB 370, § 358.

The enactment of this section did not abrogate existing municipal ordinances on the same subject and did not deprive municipalities of the power to legislate thereon in the future. State v. Hauser, 137 Neb. 138, 288 N.W. 518 (1939).

**60-6,263 Safety glass; requirements; vehicles built after January 1, 1935; motorcycle windshield; requirements; violation; penalty.**

(1) It shall be unlawful to operate on any highway in this state any motor vehicle, other than a motorcycle, manufactured or assembled, whether from a kit or otherwise, after January 1, 1935, which is designed or used for the purpose of carrying passengers unless such vehicle is equipped in all doors, windows, and windshields with safety glass. Any windshield attached to a motorcycle shall be manufactured of products which will successfully withstand discoloration due to exposure to sunlight or abnormal temperatures over an extended period of time.

(2) For purposes of this section, motorcycle does not include an autocycle.

(3) The owner or operator of any motor vehicle operated in violation of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1933, c. 101, § 2, p. 413; Laws 1937, c. 145, § 2, p. 554; C.S.Supp.,1941, § 39-1195; R.S.1943, § 39-7,101; Laws 1977, LB 314, § 4; R.S.1943, (1988), § 39-6,155; Laws 1993, LB 370, § 359; Laws 2003, LB 238, § 7; Laws 2018, LB909, § 103.

**60-6,264 Violation by common carrier; permit revoked or suspended.**

In case of any violation of section 60-6,263 by any common carrier or person operating a motor vehicle under a permit issued by the Director of Motor Vehicles, the Public Service Commission, or any other authorized body or officer, such permit shall be revoked or, in the discretion of such authorized department, commission, body, or officer, suspended until the provisions of such section are satisfactorily complied with.

**Source:** Laws 1933, c. 101, § 6, p. 414; Laws 1937, c. 145, § 6, p. 556; C.S.Supp.,1941, § 39-1199; R.S.1943, § 39-7,106; Laws 1957, c. 366, § 20, p. 1258; Laws 1972, LB 1058, § 7; R.S.Supp.,1972, § 39-7,106; Laws 1987, LB 224, § 10; R.S.1943, (1988), § 39-6,160; Laws 1993, LB 370, § 360.

(u) OCCUPANT PROTECTION SYSTEMS AND  
THREE-POINT SAFETY BELT SYSTEMS**60-6,265 Occupant protection system and three-point safety belt system, defined.**

For purposes of sections 60-6,266 to 60-6,273:

(1) Occupant protection system means a system utilizing a lap belt, a shoulder belt, or any combination of belts installed in a motor vehicle which (a) restrains drivers and passengers and (b) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207, 571.208, 571.209, and 571.210, as such standards existed on January 1, 2021, or, as a minimum standard, to the federal motor vehicle safety standards for passenger restraint systems applicable for the motor vehicle's model year; and

(2) Three-point safety belt system means a system utilizing a combination of a lap belt and a shoulder belt installed in a motor vehicle which restrains drivers and passengers.

**Source:** Laws 1993, LB 370, § 361; Laws 2004, LB 227, § 1; Laws 2006, LB 853, § 19; Laws 2007, LB239, § 6; Laws 2008, LB756, § 21; Laws 2009, LB331, § 11; Laws 2015, LB231, § 33; Laws 2018, LB42, § 1; Laws 2019, LB79, § 19; Laws 2020, LB944, § 68; Laws 2021, LB149, § 18.

Effective date August 28, 2021.

**60-6,266 Occupant protection system; 1973 year model and later motor vehicles; requirements; three-point safety belt system; violation; penalty.**

(1) Every motor vehicle designated by the manufacturer as 1973 year model or later operated on any highway, road, or street in this state, except farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations, autocycles, motorcycles, motor-driven cycles, mopeds, and buses, shall be equipped with an occupant protection system of a type which:

(a) Meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 as such regulations currently exist or as the regulations existed when the occupant protection system was originally installed by the manufacturer; or

(b) If the occupant protection system has been replaced, meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 that applied to the originally installed occupant protection system or of a more recently issued version of such regulations. The purchaser of any such vehicle may designate the make or brand of or furnish such occupant protection system to be installed.

(2) Every autocycle shall be equipped with a three-point safety belt system.

(3) Any person selling a motor vehicle in this state not in compliance with this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1963, c. 214, § 1, p. 687; R.R.S.1943, § 39-7,123.05; Laws 1977, LB 41, § 31; Laws 1985, LB 496, § 3; Laws 1992, LB 958, § 8; R.S.Supp.,1992, § 39-6,171; Laws 1993, LB 370, § 362; Laws 2015, LB231, § 34.

**60-6,267 Use of restraint system, occupant protection system, or three-point safety belt system; when; information and education program.**

(1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system or a three-point safety belt system shall ensure that all children up to eight years of age being transported by such vehicle (a) use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1,

2009, and which is correctly installed in such vehicle and (b) occupy a seat or seats, other than a front seat, if such seat or seats are so equipped with such passenger restraint system and such seat or seats are not already occupied by a child or children under eight years of age. In addition, all children up to two years of age shall use a rear-facing child passenger restraint system until the child outgrows the child passenger restraint system manufacturer's maximum allowable height or weight.

(2) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system or a three-point safety belt system shall ensure that all children eight years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

(3) Subsections (1) and (2) of this section apply to autocycles and to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2009, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(4) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) or (2) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(5) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) or (2) of this section when operating such authorized emergency vehicles pursuant to their employment.

(6) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) or (2) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(7) The Department of Transportation shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(8) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system or a three-point safety belt system.

(9) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp., 1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB239, § 7; Laws 2008, LB756, § 22; Laws 2009,

LB219, § 1; Laws 2009, LB331, § 12; Laws 2011, LB67, § 1; Laws 2015, LB231, § 35; Laws 2017, LB339, § 219; Laws 2018, LB42, § 2; Laws 2018, LB909, § 104.

**60-6,268 Use of restraint system or occupant protection system; violations; penalty; enforcement; when.**

(1) A person violating any provision of subsection (1) or (2) of section 60-6,267 shall be guilty of an infraction as defined in section 29-431 and shall be fined twenty-five dollars for each violation. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense.

(2) Enforcement of subsection (2) or (8) of section 60-6,267 shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation or some other offense unless the violation involves a person under the age of eighteen years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

**Source:** Laws 1983, LB 306, § 3; R.S.1943, (1988), § 39-6,103.02; Laws 1993, LB 370, § 364; Laws 2000, LB 410, § 2; Laws 2002, LB 1073, § 2; Laws 2004, LB 227, § 3; Laws 2011, LB67, § 2.

**60-6,269 Violation of child passenger restraint requirements; how construed.**

Violations of the provisions of sections 60-6,267 and 60-6,268 shall not constitute prima facie evidence of negligence nor shall compliance with such sections constitute a defense to any claim for personal injuries to a child or recovery of medical expenses for injuries sustained in any motor vehicle accident. Violation of such sections by a driver shall not constitute a defense for another person to any claim for personal injuries to a child or recovery of medical expenses for injuries sustained in any motor vehicle accident.

**Source:** Laws 1983, LB 306, § 4; R.S.1943, (1988), § 39-6,103.03; Laws 1993, LB 370, § 365.

**60-6,270 Occupant protection system; three-point safety belt system; use required; when; exceptions.**

(1) Except as provided in subsection (2) or (3) of this section, no driver shall operate a motor vehicle upon a highway or street in this state unless the driver and each front-seat occupant in the vehicle are wearing occupant protection systems and all occupant protection systems worn are properly adjusted and fastened.

(2) Except as otherwise provided in subsection (3) of this section, no driver shall operate an autocycle upon a highway or street of this state unless the driver is wearing a three-point safety belt system and it is properly adjusted and fastened.

(3) The following persons shall not be required to wear an occupant protection system or a three-point safety belt system:

(a) A person who possesses written verification from a physician that the person is unable to wear an occupant protection system or a three-point safety belt system for medical reasons;



(b) A rural letter carrier of the United States Postal Service while performing his or her duties as a rural letter carrier between the first and last delivery points; and

(c) A member of an emergency medical service while involved in patient care.

(4) For purposes of this section, motor vehicle means a vehicle required by section 60-6,266 to be equipped with an occupant protection system or a three-point safety belt system.

**Source:** Laws 1985, LB 496, § 6; Laws 1992, LB 958, § 6; R.S.Supp.,1992, § 39-6,103.07; Laws 1993, LB 370, § 366; Laws 1993, LB 575, § 23; Laws 1997, LB 138, § 41; Laws 2015, LB231, § 36.

**60-6,271 Enforcement of occupant protection system requirements; when.**

Enforcement of section 60-6,270 by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a violation or some other offense.

**Source:** Laws 1985, LB 496, § 4; Laws 1992, LB 958, § 4; R.S.Supp.,1992, § 39-6,103.05; Laws 1993, LB 370, § 367.

**60-6,272 Occupant protection system; three-point safety belt system; violation; penalty.**

Any person who violates section 60-6,270 shall be guilty of a traffic infraction and shall be fined twenty-five dollars, but no court costs shall be assessed against him or her nor shall any points be assessed against the driving record of such person. Regardless of the number of persons in such vehicle not wearing an occupant protection system or a three-point safety belt system pursuant to such section, only one violation shall be assessed against the driver of such motor vehicle for each time the motor vehicle is stopped and a violation of such section is found.

**Source:** Laws 1985, LB 496, § 5; Laws 1992, LB 958, § 5; R.S.Supp.,1992, § 39-6,103.06; Laws 1993, LB 370, § 368; Laws 1993, LB 575, § 22; Laws 2015, LB231, § 37.

**60-6,273 Occupant protection system; three-point safety belt system; violation; evidence; when admissible.**

Evidence that a person was not wearing an occupant protection system or a three-point safety belt system at the time he or she was injured shall not be admissible in regard to the issue of liability or proximate cause but may be admissible as evidence concerning mitigation of damages, except that it shall not reduce recovery for damages by more than five percent.

**Source:** Laws 1985, LB 496, § 7; Laws 1992, LB 958, § 7; R.S.Supp.,1992, § 39-6,103.08; Laws 1993, LB 370, § 369; Laws 2015, LB231, § 38.

A court should apply this section before applying a statutory cap on damages. *Werner v. County of Platte*, 284 Neb. 899, 824 N.W.2d 38 (2012).

Under this section, evidence that a person was not wearing a seatbelt is admissible only as evidence concerning the mitigation of damages and cannot be used with respect to the issue of liability or proximate cause. *Fickle v. State*, 273 Neb. 990, 735 N.W.2d 754 (2007).

Evidence of seatbelt misuse or nonuse was not admissible under this section where the plaintiff had dropped her claim that the seatbelt was faulty and stipulated before trial to a 5-percent reduction in the judgment. The trial court's reduction of the jury's award by 5 percent represented the full mitigation of damages available. *Shipler v. General Motors Corp.*, 271 Neb. 194, 710 N.W.2d 807 (2006).

Evidence of plaintiff's failure to wear a seatbelt may be introduced for mitigation of damages if defendant has demonstrated a causal connection between plaintiff's failure to wear an available seatbelt and the damages sustained by plaintiff. Jury instruction on plaintiff's failure to wear a seatbelt is proper

to reduce damages by 5 percent or less, but only when defendant has demonstrated a causal connection between plaintiff's failure to wear an available seatbelt and the damages sustained by plaintiff. *Vredeveld v. Clark*, 244 Neb. 46, 504 N.W.2d 292 (1993).

(v) RADAR TRANSMISSION DEVICES

**60-6,274 Terms, defined.**

For purposes of sections 60-6,274 to 60-6,277:

(1) Radar transmission device shall mean any mechanism designed to interfere with the reception of radio microwaves in the electromagnetic spectrum, which microwaves, commonly referred to as radar, are employed by law enforcement officials to measure the speed of motor vehicles;

(2) Possession shall mean to have a radar transmission device in a motor vehicle if such device is not (a) disconnected from all power sources and (b) in the rear trunk, which shall include the spare tire compartment, or any other compartment which is not accessible to the driver or any other person in the vehicle while such vehicle is in operation. If no such compartment exists in a vehicle, then such device must be disconnected from all power sources and be placed in a position not readily accessible to the driver or any other person in the vehicle; and

(3) Transceiver shall mean an apparatus contained in a single housing, functioning alternately as a radio transmitter and receiver.

**Source:** Laws 1982, LB 32, § 2; R.S.1943, (1988), § 39-6,206; Laws 1993, LB 370, § 370.

**60-6,275 Radar transmission device; operation; possession; unlawful; violation; penalty.**

It shall be unlawful for any person to operate or possess any radar transmission device while operating a motor vehicle on any highway in this state. Any person who violates this section shall be guilty of a Class IIIA misdemeanor.

**Source:** Laws 1982, LB 32, § 1; R.S.1943, (1988), § 39-6,205; Laws 1993, LB 370, § 371.

**60-6,276 Authorized devices.**

Section 60-6,275 shall not apply to (1) any transmitter, transceiver, or receiver of radio waves which has been lawfully licensed by the Federal Communications Commission or (2) any device being used by law enforcement officials in their official duties.

**Source:** Laws 1982, LB 32, § 3; R.S.1943, (1988), § 39-6,207; Laws 1993, LB 370, § 372.

**60-6,277 Prohibited device; seizure; disposal.**

Any device prohibited by sections 60-6,275 and 60-6,276 found as the result of an arrest made under such sections shall be seized, and when no longer needed as evidence, such device shall, if the owner was convicted of an offense

under such sections, be considered as contraband and disposed of pursuant to section 29-820.

**Source:** Laws 1982, LB 32, § 5; R.S.1943, (1988), § 39-6,209; Laws 1993, LB 370, § 373.

(w) HELMETS

**60-6,278 Legislative findings.**

The Legislature hereby finds and declares that head injuries that occur to motorcyclists and moped operators which could be prevented or lessened by the wearing of helmets are a societal problem and that the financial and emotional costs of such injuries cannot be viewed solely on a personal level. It is the intent of the Legislature to prevent injuries and fatalities which occur due to motorcycle and moped accidents and to prevent the subsequent damage to society which results due to the cost of caring for injured people, the pain and suffering which accompanies such injuries and fatalities, and the loss of productive members of society from such injuries.

**Source:** Laws 1988, LB 428, § 1; R.S.1943, (1988), § 39-6,210; Laws 1993, LB 370, § 374.

**60-6,279 Protective helmets; required; when.**

(1) A person shall not operate or be a passenger in an auticycle described in subsection (2) of this section, on a motorcycle other than an auticycle, or on a moped on any highway in this state unless such person is wearing a protective helmet of the type and design manufactured for use by operators of such vehicles and unless such helmet is secured properly on his or her head with a chin strap while the vehicle is in motion. All such protective helmets shall be designed to reduce injuries to the user resulting from head impacts and shall be designed to protect the user by remaining on the user's head, deflecting blows, resisting penetration, and spreading the force of impact. Each such helmet shall consist of lining, padding, and chin strap and shall meet or exceed the standards established in the United States Department of Transportation's Federal Motor Vehicle Safety Standard No. 218, 49 C.F.R. 571.218, for motorcycle helmets.

(2) This section applies to an auticycle that has a seating area that is not completely enclosed.

**Source:** Laws 1988, LB 428, § 2; R.S.1943, (1988), § 39-6,211; Laws 1993, LB 370, § 375; Laws 2018, LB909, § 105.

The list required by section 39-6,212 (transferred to section 60-6,280) acts as a limiting construction of this section by enumerating some of those helmets which meet the criteria of this section; when taken together, the helmet law and list are not vague. Claims that this section violates constitutional rights to due process and equal protection are without merit, since the helmet law implicates neither a fundamental right nor a suspect

classification and is rationally related to a legitimate legislative aim. Although the State may promulgate and enforce motorcycle helmet standards only if the state standards are identical to those promulgated by the federal Department of Transportation, the helmet law is constitutional, since the visor requirement is properly severable from the remainder of this section. *Robotham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992).

**60-6,280 Approved protective helmets.**

The Department of Motor Vehicles shall publish a list of approved protective helmets which meet the requirements of section 60-6,279. Such list shall not be inclusive. Any person wearing a protective helmet which meets the require-

ments established pursuant to such section shall be deemed to be in compliance with such section.

**Source:** Laws 1988, LB 428, § 3; R.S.1943, (1988), § 39-6,212; Laws 1993, LB 370, § 376.

Since the list required by this section is noninclusive, it does not improperly delegate to the Department of Motor Vehicles the authority to define the essential elements of a crime. *Robotham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992).

**60-6,281 Protective helmets; conformance with federal standards; effect.**

Any person using a protective helmet purchased prior to July 9, 1988, which is labeled to show that it conforms with applicable federal motor vehicle safety standards shall be deemed to be in compliance with section 60-6,279.

**Source:** Laws 1988, LB 428, § 4; R.S.1943, (1988), § 39-6,213; Laws 1993, LB 370, § 377.

**60-6,282 Violation; penalty.**

Any person who violates section 60-6,279 shall be guilty of a traffic infraction and shall be fined fifty dollars.

**Source:** Laws 1988, LB 428, § 5; R.S.1943, (1988), § 39-6,214; Laws 1993, LB 370, § 378.

(x) MISCELLANEOUS EQUIPMENT PROVISIONS

**60-6,283 Splash aprons; requirements.**

Every new motor vehicle or semitrailer purchased after January 1, 1956, and operated on any highway in this state shall be equipped with fenders, covers, or devices, including flaps or splash aprons, unless the body of the vehicle affords adequate protection to effectively minimize the spray or splash of water or mud to the rear of the motor vehicle or semitrailer.

**Source:** Laws 1955, c. 160, § 1, p. 464; R.R.S.1943, § 39-735.01; R.S. 1943, (1988), § 39-6,128; Laws 1993, LB 370, § 379.

**60-6,284 Towing; drawbars or other connections; length; red flag required, when.**

The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed fifteen feet in length from one vehicle to the other, except a vehicle being towed with a connection device that is an integral component of the vehicle and is designed to attach to a lead unit with construction in such a manner as to allow articulation at the attachment point on the chassis of the towed vehicle but not to allow lateral or side-to-side movement. Such connecting device shall meet the safety standards for towbar failure or disconnection in the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363 and shall have displayed at approximately the halfway point between the towing vehicle and the towed vehicle on the connecting mechanism a red flag or other signal or cloth not less than twelve inches both in length and width that shall be at least five feet and not more than ten feet from the level of the paving and shall be displayed along the outside line on both sides of the towing and towed vehicles. Whenever such connection consists of a

chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches both in length and width.

**Source:** Laws 1931, c. 110, § 37, p. 317; C.S.Supp.,1941, § 39-1168; R.S.1943, § 39-772; Laws 1980, LB 785, § 1; R.S.1943, (1988), § 39-6,132; Laws 1993, LB 370, § 380; Laws 2006, LB 1007, § 11.

**60-6,285 Horn; requirements; prohibited acts.**

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. Except as otherwise provided in this section, it shall be unlawful for any vehicle to be equipped with or for any person to use upon a vehicle any siren, exhaust, compression, or spark plug whistle or for any person at any time to use a horn, otherwise than as a reasonable warning, or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device. Every police and fire department and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren, or exhaust whistle.

**Source:** Laws 1931, c. 110, § 39, p. 318; C.S.Supp.,1941, § 39-1170; R.S.1943, § 39-774; Laws 1957, c. 366, § 5, p. 1248; R.R.S.1943, § 39-774; Laws 1987, LB 224, § 5; R.S.1943, (1988), § 39-6,135; Laws 1993, LB 370, § 381.

Where evidence is not sufficient to support finding there was a duty to sound a horn, court could not properly submit that issue. *Merritt v. Reed*, 186 Neb. 561, 185 N.W.2d 261 (1971).

The duty to sound a signal, warning of the approach of a motor vehicle, depends largely on the circumstances of the particular case. *Tews v. Bamrick and Carroll*, 148 Neb. 59, 26 N.W.2d 499 (1947).

Before backing a motor vehicle, operator must give signal of intention. *Chew v. Coffin*, 144 Neb. 170, 12 N.W.2d 839 (1944).

Failure of trial court to supplement its instructions to include provisions of this section was not erroneous. *Bern v. Evans*, 349 F.2d 282 (8th Cir. 1965).

**60-6,286 Muffler or noise-suppressing system; prevention of fumes and smoke; requirements.**

Every vehicle shall be equipped, maintained, and operated so as to prevent excessive or unusual noise. No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler or other effective noise-suppressing system in good working order and in constant operation. It shall be unlawful to use a muffler cutout, bypass, or similar device on any motor vehicle upon a highway.

The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

**Source:** Laws 1931, c. 110, § 42, p. 318; C.S.Supp.,1941, § 39-1173; R.S.1943, § 39-777; Laws 1967, c. 232, § 1, p. 617; R.R.S.1943, § 39-777; R.S.1943, (1988), § 39-6,137; Laws 1993, LB 370, § 382; Laws 1993, LB 575, § 31.

**60-6,287 Television set; equipping motor vehicle with screen visible to driver; unlawful; penalty.**

It shall be unlawful to operate upon any public highway in this state a motor vehicle which is equipped with or in which is located a television set so placed

that the viewing screen is visible to the driver while operating such vehicle. Any person violating this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1951, c. 113, § 1, p. 522; R.R.S.1943, § 39-7,123.01; Laws 1977, LB 41, § 29; R.S.1943, (1988), § 39-6,169; Laws 1993, LB 370, § 383.

**60-6,287.01 Nitrous oxide use prohibited.**

It is unlawful to use nitrous oxide in any motor vehicle operated on any highway in this state.

**Source:** Laws 2002, LB 1303, § 11.

(y) SIZE, WEIGHT, AND LOAD

**60-6,288 Vehicles; width limit; exceptions; conditions; Director-State Engineer; powers.**

(1) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any portion of the National System of Interstate and Defense Highways. The Director-State Engineer shall adopt and promulgate rules and regulations, consistent with federal requirements, designating safety devices which shall be excluded in determining vehicle width.

(2) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any highway which is not a portion of the National System of Interstate and Defense Highways, except that such prohibition shall not apply to:

(a) Farm equipment in temporary movement, during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with, in the normal course of farm operations;

(b) Combines eighteen feet or less in width, while in the normal course of farm operations and while being driven during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(c) Combines in excess of eighteen feet in width, while in the normal course of farm operations, while being driven during daylight hours for distances of twenty-five miles or less on highways and while preceded by a well-lighted pilot vehicle or flagperson, except that such combines may be driven on highways while in the normal course of farm operations for distances of twenty-five miles or less and while preceded by a well-lighted pilot vehicle or flagperson during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(d) Combines and vehicles used in transporting combines or other implements of husbandry, and only when transporting combines or other implements of husbandry, to be engaged in harvesting or other agricultural work, while being transported into or through the state during daylight hours, when the total width including the width of the combine or other implement of husbandry being transported does not exceed fifteen feet, except that vehicles used in transporting combines or other implements of husbandry may, when necessary to the harvesting operation or other agricultural work, travel unloaded for

distances not to exceed twenty-five miles, while the combine or other implement of husbandry to be transported is engaged in a harvesting operation or other agricultural work;

(e) Farm equipment dealers or their representatives as authorized under section 60-6,382 driving, delivering, or picking up farm equipment, including portable livestock buildings not exceeding fourteen feet in width, or implements of husbandry during daylight hours;

(f) Livestock forage vehicles loaded or unloaded that comply with subsection (2) of section 60-6,305;

(g) During daylight hours only, vehicles en route to pick up, delivering, or returning unloaded from delivery of baled livestock forage which, including the load if any, may be twelve feet in width;

(h) Mobile homes or prefabricated livestock buildings not exceeding sixteen feet in width and with an outside tire width dimension not exceeding one hundred twenty inches moving during daylight hours;

(i) Self-propelled specialized mobile equipment with a fixed load when:

(i) The self-propelled specialized mobile equipment will be transported on a state highway, excluding any portion of the National System of Interstate and Defense Highways, on a city street, or on a road within the corporate limits of a city;

(ii) The city in which the self-propelled specialized mobile equipment is intended to be transported has authorized a permit pursuant to section 60-6,298 for the transportation of the self-propelled specialized mobile equipment, specifying the route to be used and the hours during which the self-propelled specialized mobile equipment can be transported, except that no permit shall be issued by a city for travel on a state highway containing a bridge or structure which is structurally inadequate to carry the self-propelled specialized mobile equipment as determined by the Department of Transportation;

(iii) The self-propelled specialized mobile equipment's gross weight does not exceed ninety-four thousand pounds if the self-propelled specialized mobile equipment has four axles or seventy-two thousand pounds if the self-propelled specialized mobile equipment has three axles; and

(iv) If the self-propelled specialized mobile equipment has four axles, the maximum weight on each set of tandem axles does not exceed forty-seven thousand pounds, or if the self-propelled specialized mobile equipment has three axles, the maximum weight on the front axle does not exceed twenty-five thousand pounds and the total maximum weight on the rear tandem axles does not exceed forty-seven thousand pounds;

(j) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(k) A motor home or travel trailer, as those terms are defined in section 71-4603, which may exceed one hundred and two inches if such excess width is attributable to an appurtenance that extends no more than six inches beyond the body of the vehicle. For purposes of this subdivision, the term appurtenance includes (i) an awning and its support hardware and (ii) any appendage that is intended to be an integral part of a motor home or travel trailer and that is installed by the manufacturer or dealer. The term appurtenance does not include any item that is temporarily affixed or attached to the exterior of the motor home or travel trailer for purposes of transporting the vehicular unit

from one location to another. Appurtenances shall not be considered in calculating the gross trailer area as defined in section 71-4603.

(3) The Director-State Engineer, with respect to highways under his or her jurisdiction, may designate certain highways upon which vehicles of no more than ninety-six inches in width may be permitted to travel. Highways so designated shall be limited to one or more of the following:

- (a) Highways with traffic lanes of ten feet or less;
- (b) Highways upon which are located narrow bridges; and
- (c) Highways which because of sight distance, surfacing, unusual curves, topographic conditions, or other unusual circumstances would not in the opinion of the Director-State Engineer safely accommodate vehicles of more than ninety-six inches in width.

**Source:** Laws 1933, c. 105, § 1, p. 425; C.S.Supp.,1941, § 39-1032; R.S.1943, § 39-719; Laws 1957, c. 156, § 1, p. 563; Laws 1961, c. 182, § 1, p. 544; Laws 1963, c. 219, § 1, p. 691; Laws 1963, c. 220, § 1, p. 693; Laws 1963, c. 221, § 1, p. 697; Laws 1965, c. 212, § 1, p. 621; Laws 1969, c. 308, § 2, p. 1101; Laws 1973, LB 491, § 1; R.S.Supp.,1973, § 39-719; Laws 1974, LB 593, § 1; Laws 1975, LB 306, § 1; Laws 1977, LB 427, § 2; Laws 1978, LB 576, § 1; Laws 1978, LB 750, § 2; Laws 1980, LB 284, § 1; Laws 1981, LB 285, § 2; Laws 1982, LB 417, § 1; Laws 1983, LB 244, § 1; Laws 1985, LB 553, § 3; Laws 1990, LB 369, § 3; R.S.Supp.,1992, § 39-6,177; Laws 1993, LB 370, § 384; Laws 1993, LB 413, § 1; Laws 1993, LB 575, § 35; Laws 1997, LB 226, § 1; Laws 1999, LB 704, § 47; Laws 2000, LB 1361, § 5; Laws 2001, LB 376, § 3; Laws 2008, LB756, § 23; Laws 2014, LB1039, § 3; Laws 2017, LB339, § 220.

#### Cross References

**Weighing stations**, see sections 60-1301 to 60-1309.

Under the exemption to the width limitations prescribed by subdivision (2)(f) of this section, the language "access to points on (dustless-surfaced) highways" means that if there is no other route available, one may move the qualified equipment over a dustless-surfaced highway. *State v. Quandt*, 234 Neb. 402, 451 N.W.2d 272 (1990).

Violation of a statute is evidence of negligence, but not negligence per se. *Clark Bilt, Inc. v. Wells Dairy Co.*, 200 Neb. 20, 261 N.W.2d 772 (1978).

Exception in this section for unbaled livestock forage applied to load only and not to vehicle. *State v. Sabin*, 184 Neb. 784, 172 N.W.2d 89 (1969).

Width of vehicle may not exceed eight feet unless special permit is obtained. *Frasier v. Gilchrist*, 165 Neb. 450, 86 N.W.2d 65 (1957).

Where truck loaded with combine exceeded statutory permissible width and was over centerline of the highway, it was evidence of negligence. *Novak v. Laptad*, 152 Neb. 87, 40 N.W.2d 331 (1949).

#### **60-6,288.01 Person moving certain buildings or objects; notice required; contents; violation; penalty.**

(1) Any person moving a building or an object that, in combination with the transporting vehicle, is over fifteen feet six inches high or wider than the roadway on a county or township road shall notify the local authority and the electric utility responsible for the infrastructure, including poles, wires, substations, and underground residential distribution cable boxes adjacent to or crossing the roadway along the route over which such building or object is being transported. Notification shall be made at least ten days prior to the move. Notification shall specifically describe the transporting vehicle, the width, length, height, and weight of the building or object to be moved, the



route to be used, and the date and hours during which the building or object will be transported. Complying with the notification requirement of this section does not exempt the person from complying with any other federal, state, or local authority permit or notification requirements.

(2) Proof of the notification required under subsection (1) of this section must be carried by any person moving a building or an object as described in this section.

(3) Any person who fails to comply with the notification requirements of this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 2011, LB164, § 2; Laws 2016, LB973, § 3.

**60-6,289 Vehicles; height; limit; height of structure; damages.**

(1) No vehicle unladen or with load shall exceed a height of fourteen feet, six inches, except:

(a) Combines or vehicles used in transporting combines, to be engaged in harvesting within or without the state, moving into or through the state during daylight hours when the overall height does not exceed fifteen feet, six inches;

(b) Livestock forage vehicles with or without load that comply with subsection (2) of section 60-6,305;

(c) Farm equipment or implements of husbandry being driven, picked up, or delivered during daylight hours by farm equipment dealers or their representatives as authorized under section 60-6,382 shall not exceed fifteen feet, six inches;

(d) Self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met;

(e) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(f) Vehicles with a baled livestock forage load that comply with subsection (4) of section 60-6,305 when the overall height does not exceed fifteen feet, six inches.

(2) No person shall be required to raise, alter, construct, or reconstruct any underpass, bridge, wire, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. The owners, lessees, and operators, jointly and severally, of vehicles exceeding twelve feet, six inches, in height shall assume the risk of loss to the vehicle or its load and shall be liable for any damages that result to overhead obstructions from operation of a vehicle exceeding twelve feet, six inches, in height.

**Source:** Laws 1933, c. 105, § 2, p. 425; C.S.Supp.,1941, § 39-1033; Laws 1943, c. 133, § 1, p. 446; R.S.1943, § 39-720; Laws 1951, c. 117, § 1, p. 526; Laws 1957, c. 156, § 2, p. 563; Laws 1969, c. 308, § 3, p. 1102; Laws 1973, LB 491, § 2; R.S.Supp.,1973, § 39-720; Laws 1974, LB 593, § 2; Laws 1977, LB 211, § 3; Laws 1978, LB 750, § 3; Laws 1980, LB 284, § 2; Laws 1985, LB 553, § 4; R.S.1943, (1988), § 39-6,178; Laws 1993, LB 370, § 385; Laws 2000, LB 1361, § 6; Laws 2008, LB756, § 24; Laws 2010, LB820, § 1; Laws 2014, LB1039, § 4.

**60-6,290 Vehicles; length; limit; exceptions.**

(1)(a) No vehicle shall exceed a length of forty feet, extreme overall dimensions, inclusive of front and rear bumpers including load, except that:

(i) A bus or a motor home, as defined in section 71-4603, may exceed the forty-foot limitation but shall not exceed a length of forty-five feet;

(ii) A truck-tractor may exceed the forty-foot limitation;

(iii) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation;

(iv) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was not actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation but shall not exceed a length of fifty-three feet including load;

(v) A semitrailer operating in a truck-tractor single semitrailer combination, while transporting baled livestock forage, may exceed the forty-foot limitation but shall not exceed a length of fifty-nine feet six inches including load; and

(vi) An articulated bus vehicle operated by a transit authority established under the Transit Authority Law or regional metropolitan transit authority established pursuant to section 18-804 may exceed the forty-foot limitation. For purposes of this subdivision (vi), an articulated bus vehicle shall not exceed sixty-five feet in length.

(b) No combination of vehicles shall exceed a length of sixty-five feet, extreme overall dimensions, inclusive of front and rear bumpers and including load, except:

(i) One truck and one trailer, loaded or unloaded, used in transporting implements of husbandry to be engaged in harvesting, while being transported into or through the state during daylight hours if the total length does not exceed seventy-five feet including load;

(ii) A truck-tractor single semitrailer combination;

(iii) A truck-tractor semitrailer trailer combination, but the semitrailer trailer portion of such combination shall not exceed sixty-five feet inclusive of connective devices;

(iv) A driveaway saddlemount vehicle transporter combination and driveaway saddlemount with fullmount vehicle transporter combination, but the total overall length shall not exceed ninety-seven feet;

(v) A stinger-steered automobile transporter, but the total overall length shall not exceed eighty feet, inclusive of a front overhang of less than four feet and a rear overhang of less than six feet. For purposes of this subdivision, automobile transporter means any vehicle combination designed and used for the transport of assembled highway vehicles, including truck camper units. An automobile transporter shall not be prohibited from the transport of cargo or general freight on a backhaul, so long as it is in compliance with weight limitations for a truck-tractor and semitrailer combination; and

(vi) A towaway trailer transporter combination, but the total overall length shall not exceed eighty-two feet. For purposes of this subdivision, towaway trailer transporter combination means a combination of vehicles consisting of a trailer transporter towing unit and two trailers or semitrailers with a total weight that does not exceed twenty-six thousand pounds, and in which the

trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributor, or dealer of such trailers or semitrailers.

(c) A truck shall be construed to be one vehicle for the purpose of determining length.

(d) A trailer shall be construed to be one vehicle for the purpose of determining length.

(2) Subsection (1) of this section shall not apply to:

(a) Extra-long vehicles which have been issued a permit pursuant to section 60-6,292;

(b) Vehicles which have been issued a permit pursuant to section 60-6,299;

(c) The temporary moving of farm machinery during daylight hours in the normal course of farm operations;

(d) The movement of unbaled livestock forage vehicles, loaded or unloaded;

(e) The movement of public utility or other construction and maintenance material and equipment at any time;

(f) Farm equipment dealers or their representatives as authorized under section 60-6,382 driving, delivering, or picking up farm equipment or implements of husbandry within the county in which the dealer maintains his or her place of business, or in any adjoining county or counties, and return;

(g) The overhang of any motor vehicle being hauled upon any lawful combination of vehicles, but such overhang shall not exceed the distance from the rear axle of the hauled motor vehicle to the closest bumper thereof;

(h) The overhang of a combine to be engaged in harvesting, while being transported into or through the state driven during daylight hours by a truck-tractor semitrailer combination, but the length of the semitrailer, including overhang, shall not exceed sixty-three feet and the maximum semitrailer length shall not exceed fifty-three feet;

(i) Any self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met; or

(j) One truck-tractor two trailer combination or one truck-tractor semitrailer trailer combination used in transporting equipment utilized by custom harvesters under contract to agricultural producers to harvest wheat, soybeans, or milo during the months of April through November but the length of the property-carrying units, excluding load, shall not exceed eighty-one feet six inches.

(3) The length limitations of this section shall be exclusive of safety and energy conservation devices such as rearview mirrors, turnsignal lights, marker lights, steps and handholds for entry and egress, flexible fender extensions, mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors, and other devices necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

**Source:** Laws 1933, c. 102, § 1, p. 414; Laws 1933, c. 105, § 3, p. 425; Laws 1935, c. 86, § 1, p. 277; Laws 1939, c. 50, § 1, p. 217; C.S.Supp.,1941, § 39-1034; R.S.1943, § 39-721; Laws 1947, c. 146, § 1, p. 402; Laws 1951, c. 117, § 2, p. 527; Laws 1953, c. 133, § 1, p. 413; Laws 1957, c. 156, § 3, p. 564; Laws 1959, c.

164, § 1, p. 599; Laws 1959, c. 165, § 1, p. 603; Laws 1961, c. 309, § 1, p. 980; Laws 1963, c. 220, § 2, p. 694; Laws 1963, c. 222, § 1, p. 699; Laws 1963, c. 223, § 1, p. 701; Laws 1965, c. 213, § 1, p. 625; Laws 1971, LB 530, § 1; R.S.Supp.,1972, § 39-721; Laws 1974, LB 920, § 2; Laws 1979, LB 112, § 1; Laws 1980, LB 284, § 3; Laws 1980, LB 785, § 2; Laws 1982, LB 383, § 1; Laws 1983, LB 411, § 1; Laws 1984, LB 983, § 3; Laws 1985, LB 553, § 5; Laws 1987, LB 224, § 13; R.S.1943, (1988), § 39-6,179; Laws 1993, LB 370, § 386; Laws 1993, LB 575, § 36; Laws 1996, LB 1104, § 3; Laws 1997, LB 720, § 18; Laws 2000, LB 1361, § 7; Laws 2001, LB 376, § 4; Laws 2006, LB 853, § 21; Laws 2008, LB756, § 25; Laws 2012, LB740, § 1; Laws 2014, LB1039, § 5; Laws 2016, LB735, § 1; Laws 2019, LB492, § 40; Laws 2020, LB944, § 69.

#### Cross References

**Transit Authority Law**, see section 14-1826.

Reception in evidence of special trip permit was not error. *Frasier v. Gilchrist*, 165 Neb. 450, 86 N.W.2d 65 (1957).

Legislative definition of vehicle or trailer, made for purposes of classification for licensing or taxing, does not change the common meaning of words used in matters disconnected there-

with. *Moffitt v. State Automobile Ins. Assn.*, 140 Neb. 578, 300 N.W. 837 (1941), vacating on rehearing, 139 Neb. 512, 297 N.W. 918 (1941).

If a driver does not display lights on a projecting load when it is dark, it is evidence of negligence. *Moore v. Nisley*, 133 Neb. 474, 275 N.W. 827 (1937).

### 60-6,291 Violations; penalty.

Except as provided in subsection (3) of section 60-6,288.01, any person who violates any provision of sections 60-6,288 to 60-6,290 or who drives, moves, causes, or knowingly permits to be moved on any highway any vehicle or vehicles which exceed the limitations as to width, length, or height as provided in such sections for which a penalty is not elsewhere provided shall be guilty of a Class III misdemeanor.

**Source:** Laws 1933, c. 105, § 8, p. 431; Laws 1941, c. 76, § 1, p. 312; C.S.Supp.,1941, § 39-1037; R.S.1943, § 39-725; Laws 1949, c. 115, § 1, p. 309; Laws 1953, c. 134, § 6, p. 421; Laws 1955, c. 151, § 2, p. 449; R.R.S.1943, § 39-725; Laws 1974, LB 593, § 4; Laws 1977, LB 41, § 35; R.S.1943, (1988), § 39-6,188; Laws 1993, LB 370, § 387; Laws 1993, LB 121, § 207; Laws 1994, LB 884, § 81; Laws 2011, LB164, § 3; Laws 2016, LB973, § 4.

Omission of reference to section on speed did not preclude general penalty. *Hyslop v. State*, 159 Neb. 802, 68 N.W.2d 698 (1955).

In addition to punishment under this section, driver's license may be suspended. *Kroger v. State*, 158 Neb. 73, 62 N.W.2d 312 (1954).

### 60-6,292 Extra-long vehicle combinations; permit; conditions; fee; rules and regulations; violation; penalty.

(1) The Department of Transportation may issue permits for the use of extra-long vehicle combinations. Such permits shall allow the extra-long vehicle combinations to operate only on the National System of Interstate and Defense Highways and only if such vehicles are empty and are being delivered for the manufacturer or retailer, except that a highway located not more than six miles from the National System of Interstate and Defense Highways may also be designated in such permits if it is determined by the Director-State Engineer that such designation is necessary for the permitholder to have access to the National System of Interstate and Defense Highways. An annual permit for

such use may be issued to each qualified carrier company or individual. The carrier company or individual shall maintain a copy of such annual permit in each truck-tractor operating as a part of an extra-long vehicle combination. The fee for such permit shall be two hundred fifty dollars per year.

(2) The permit shall allow operation of the following extra-long vehicle combinations of not more than three cargo units and not fewer than six axles nor more than nine axles:

(a) A truck-tractor, a semitrailer, and two trailers having an overall combination length of not more than one hundred five feet. Semitrailers and trailers shall be of approximately equal lengths;

(b) A truck-tractor, semitrailer, and single trailer having an overall length of not more than one hundred five feet. Semitrailers and trailers shall be of approximately equal lengths; and

(c) A truck-tractor, semitrailer, or single trailer, one trailer of which is not more than forty-eight feet long, the other trailer of which is not more than twenty-eight feet long nor less than twenty-six feet long, and the entire combination of which is not more than ninety-five feet long. The shorter trailer shall be operated as the rear trailer.

For purposes of this subsection, a semitrailer used with a converter dolly shall be considered a trailer.

(3) The department shall adopt and promulgate rules and regulations governing the issuance of the permits, including, but not limited to, selection of carriers, driver qualifications, equipment selection, hours of operations, weather conditions, road conditions, and safety considerations.

(4) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1984, LB 983, § 1; R.S.1943, (1988), § 39-6,179.01; Laws 1993, LB 370, § 388; Laws 2017, LB339, § 221.

**60-6,293 Truck-trailer combination; warning decal, when.**

A warning decal shall be attached to every truck-trailer combination, except trailers subject to section 60-6,243, having a connection device between such vehicles which is more than twelve feet in length. Such decal shall be made of red reflectorized material and contain the words:

LONG VEHICLE  
PASS WITH CARE

The letters shall be of white reflectorized material and shall be not less than three inches in height.

The decal shall be affixed to the sides and rear parts of the trailer at a height of not less than forty-eight inches nor more than seventy-four inches from the ground level.

**Source:** Laws 1974, LB 806, § 1; R.S.1943, (1988), § 39-6,130.01; Laws 1993, LB 370, § 389.

**60-6,294 Vehicles; weight limit; further restrictions by Department of Transportation, when authorized; axle load; load limit on bridges; overloading; liability.**

MOTOR VEHICLES

(1) Every vehicle, whether operated singly or in a combination of vehicles, and every combination of vehicles shall comply with subsections (2) and (3) of this section except as provided in sections 60-6,294.01, 60-6,297, and 60-6,383. The limitations imposed by this section shall be supplemental to all other provisions imposing limitations upon the size and weight of vehicles.

(2) No wheel of a vehicle or trailer equipped with pneumatic or solid rubber tires shall carry a gross load in excess of ten thousand pounds on any highway nor shall any axle carry a gross load in excess of twenty thousand pounds on any highway. An axle load shall be defined as the total load transmitted to the highway by all wheels the centers of which may be included between two parallel transverse vertical planes forty inches apart extending across the full width of the vehicle.

(3) No group of two or more consecutive axles shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, except that the maximum load carried on any group of two or more axles shall not exceed eighty thousand pounds on the National System of Interstate and Defense Highways unless the Director-State Engineer pursuant to section 60-6,295 authorizes a greater weight.

Distance in feet between the extremes of any group of two or more consecutive axles	Maximum load in pounds carried on any group of two or more consecutive axles					
	Two Axles	Three Axles	Four Axles	Five Axles	Six Axles	Seven Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000					
8	34,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,000	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,000	54,500	60,000		
20		51,000	55,500	60,500		
21		51,500	56,000	61,000		
22		52,500	56,500	61,500		
23		53,000	57,500	62,500		
24		54,000	58,000	63,000		
25		54,500	58,500	63,500	69,000	
26		55,500	59,500	64,000	69,500	
27		56,000	60,000	65,000	70,000	
28		57,000	60,500	65,500	71,000	
29		57,500	61,500	66,000	71,500	
30		58,500	62,000	66,500	72,000	
31		59,000	62,500	67,500	72,500	
32		60,000	63,500	68,000	73,000	
33			64,000	68,500	74,000	

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34	64,500	69,000	74,500	
35	65,500	70,000	75,000	
36	66,000	70,500	75,500	
37	66,500	71,000	76,000	81,500
38	67,500	72,000	77,000	82,000
39	68,000	72,500	77,500	82,500
40	68,500	73,000	78,000	83,500
41	69,500	73,500	78,500	84,000
42	70,000	74,000	79,000	84,500
43	70,500	75,000	80,000	85,000
44	71,500	75,500	80,500	85,500
45	72,000	76,000	81,000	86,000
46	72,500	76,500	81,500	87,000
47	73,500	77,500	82,000	87,500
48	74,000	78,000	83,000	88,000
49	74,500	78,500	83,500	88,500
50	75,500	79,000	84,000	89,000
51	76,000	80,000	84,500	89,500
52	76,500	80,500	85,000	90,500
53	77,500	81,000	86,000	91,000
54	78,000	81,500	86,500	91,500
55	78,500	82,500	87,000	92,000
56	79,500	83,000	87,500	92,500
57	80,000	83,500	88,000	93,000
58		84,000	89,000	94,000
59		85,000	89,500	94,500
60		85,500	90,000	95,000

(4) The distance between axles shall be measured to the nearest foot. When a fraction is exactly one-half foot, the next larger whole number shall be used, except that:

(a) Any group of three axles shall be restricted to a maximum load of thirty-four thousand pounds unless the distance between the extremes of the first and third axles is at least ninety-six inches in fact; and

(b) The maximum gross load on any group of two axles, the distance between the extremes of which is more than eight feet but less than eight feet six inches, shall be thirty-eight thousand pounds.

(5) The limitations of subsections (2) through (4) of this section shall apply as stated to all main, rural, and intercity highways but shall not be construed as inhibiting heavier axle loads in metropolitan areas, except on the National System of Interstate and Defense Highways, if such loads are not prohibited by city ordinance.

(6) The weight limitations of wheel and axle loads as defined in subsections (2) through (4) of this section shall be restricted to the extent deemed necessary by the Department of Transportation for a reasonable period when road subgrades or pavements are weak or are materially weakened by climatic conditions.

(7) Two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each when the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six, thirty-seven, or thirty-eight feet except as provided in section 60-6,297. Such vehicles shall be subject to section 60-6,301.

(8) If any vehicle crosses a bridge with a total gross load in excess of the posted capacity of such bridge and as a result of such crossing any damage

results to the bridge, the owner of such vehicle shall be responsible for all of such damage.

(9) Vehicles equipped with a greater number of axles than provided in the table in subsection (3) of this section shall be legal if they do not exceed the maximum load upon any wheel or axle, the maximum load upon any group of two or more consecutive axles, and the total gross weight, or any of such weights as provided in subsections (2) and (3) of this section.

(10) Subsections (1) through (9) of this section shall not apply to a vehicle which has been issued a permit pursuant to section 60-6,299, self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met, or an emergency vehicle when the requirements of subdivision (1)(a)(v) of section 60-6,298 are met.

(11) Any two consecutive axles the centers of which are more than forty inches and not more than ninety-six inches apart, measured to the nearest inch between any two adjacent axles in the series, shall be defined as tandem axles, and the gross weight transmitted to the road surface through such series shall not exceed thirty-four thousand pounds. No axle of the series shall exceed the maximum weight permitted under this section for a single axle.

(12) Dummy axles shall be disregarded in determining the lawful weight of a vehicle or vehicle combination for operation on the highway. Dummy axle shall mean an axle attached to a vehicle or vehicle combination in a manner so that it does not articulate or substantially equalize the load and does not carry at least the lesser of eight thousand pounds or eight percent of the gross weight of the vehicle or vehicle combination.

(13) The maximum gross weight limit and the axle weight limit for any vehicle or combination of vehicles equipped with idle reduction technology may be increased by an amount necessary to compensate for the additional weight of the idle reduction technology as provided in 23 U.S.C. 127(a)(12), as such section existed on October 1, 2012. The additional amount of weight allowed by this subsection shall not exceed five hundred fifty pounds and shall not be construed to be in addition to the five-percent-in-excess-of-maximum-load provision of subdivision (1) of section 60-6,301.

(14)(a) The maximum gross weight for any vehicle or combination of vehicles (i) operated on the National System of Interstate and Defense Highways, including adjoining portions of the state highway system for reasonable access to terminals and facilities for food, fuel, repairs, and rest, as designated by the Department of Transportation, and (ii) powered (A) by an engine fueled primarily by natural gas or (B) primarily by means of electric battery power, may exceed the gross weight limitations provided in subsections (2), (3), (4), (7), (9), and (11) of this section in an amount that:

- (b)(i) Is up to a maximum of two thousand pounds; and
- (ii) Does not exceed eighty-two thousand pounds.

(15) For purposes of this subsection, emergency vehicle means a vehicle designed to be used under emergency conditions to transport personnel and equipment and to support the suppression of fires and mitigation of other hazardous situations. An emergency vehicle may exceed the gross load limitations provided in subsections (2), (3), (4), (7), (9), and (11) of this section on the National System of Interstate and Defense Highways, including adjoining portions of the state highway system for reasonable access to terminals and



facilities for food, fuel, repairs, and rest, as designated by the Department of Transportation, up to a gross vehicle weight of eighty-six thousand pounds, and that does not exceed:

- (a) Twenty-four thousand pounds on a single steering axle;
- (b) Thirty-three thousand five hundred pounds on a single drive axle;
- (c) Sixty-two thousand pounds on a tandem axle; or
- (d) Fifty-two thousand pounds on a tandem rear drive steer axle.

**Source:** Laws 1933, c. 105, § 4, p. 426; Laws 1939, c. 50, § 2, p. 218; C.S.Supp.,1941, § 39-1035; Laws 1943, c. 133, § 2, p. 446; R.S. 1943, § 39-722; Laws 1945, c. 91, § 1, p. 312; Laws 1947, c. 147, § 1, p. 403; Laws 1953, c. 131, § 9, p. 404; Laws 1953, c. 134, § 1, p. 416; Laws 1959, c. 164, § 2, p. 600; Laws 1969, c. 318, § 1, p. 1150; R.S.Supp.,1972, § 39-722; Laws 1980, LB 284, § 4; Laws 1982, LB 383, § 2; Laws 1984, LB 726, § 1; Laws 1985, LB 553, § 6; Laws 1987, LB 132, § 1; Laws 1990, LB 369, § 4; R.S.Supp.,1992, § 39-6,180; Laws 1993, LB 370, § 390; Laws 1995, LB 186, § 1; Laws 1996, LB 1104, § 4; Laws 2000, LB 1361, § 8; Laws 2005, LB 82, § 3; Laws 2008, LB756, § 26; Laws 2016, LB977, § 25; Laws 2017, LB339, § 222; Laws 2018, LB909, § 106; Laws 2020, LB944, § 70.

#### Cross References

**Special load restrictions**, rules and regulations of Department of Transportation, adoption, penalty, see sections 39-102 and 39-103.  
**Weighing stations**, see sections 60-1301 to 60-1309.

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).

Complaint charging violation of this section was within jurisdiction of justice of the peace. *Conkling v. DeLany*, 167 Neb. 4, 91 N.W.2d 250 (1958).

Limitation of weight on group of axles was proper exercise of police power. *State v. Luttrell*, 159 Neb. 641, 68 N.W.2d 332 (1955).

An absolute liability arises when truck in excess of posted weight causes bridge to collapse. *Central Neb. Public Power & Irrigation Dist. v. Boettcher*, 154 Neb. 815, 49 N.W.2d 690 (1951).

#### **60-6,294.01 Agricultural floater-spreader implements; weight limit; exception; speed limit.**

(1) The Legislature finds that highway and roadway travel by agricultural floater-spreader implements is incidental to their designed purpose and use and that their use is essential to the agricultural industry of the State of Nebraska.

(2) Agricultural floater-spreader implement means self-propelled equipment which is designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops and which has a gross laden weight of forty-eight thousand pounds or less and is equipped with floatation tires.

(3) Subsections (2) and (3) of section 60-6,294 shall not apply to agricultural floater-spreader implements. This exemption does not include travel upon the National System of Interstate and Defense Highways.

(4) When operated upon any highway, an agricultural floater-spreader implement shall not be operated at a speed in excess of forty miles per hour.

**Source:** Laws 1996, LB 1104, § 5; Laws 2003, LB 103, § 1.

#### **60-6,295 National System of Interstate and Defense Highways; Director-State Engineer; authorize weight limits.**

Upon finding that no loss to the state of federal highway-user funds would result therefrom, the Director-State Engineer may authorize the carrying on the National System of Interstate and Defense Highways of the weights set forth in the table of weights in section 60-6,294 or such part thereof as would result in no loss to the state of such funds.

**Source:** Laws 1973, LB 463, § 1; R.S.Supp.,1973, § 39-722.02; Laws 1980, LB 785, § 3; Laws 1984, LB 726, § 2; R.S.1943, (1988), § 39-6,180.01; Laws 1993, LB 370, § 391.

**60-6,296 Motor vehicles; trailers; overloading; violation; penalty.**

(1) Any person operating any motor vehicle, semitrailer, or trailer, when the weight of the vehicle and load is in violation of the provisions of section 60-6,294 and the vehicle and load do not qualify for the exceptions permitted by section 60-6,301, shall be guilty of a traffic infraction and shall, upon conviction thereof, be fined:

(a) Twenty-five dollars for carrying a gross load of five percent or less over the maximum;

(b) One hundred dollars for carrying a gross load of more than five percent but not more than ten percent over the maximum;

(c) Two hundred dollars for carrying a gross load of more than ten percent but not more than fifteen percent over the maximum;

(d) Three hundred fifty dollars for carrying a gross load of more than fifteen percent but not more than twenty percent over the maximum;

(e) Six hundred dollars for carrying a gross load of more than twenty percent but not more than twenty-five percent over the maximum;

(f) One thousand dollars for carrying a gross load of more than twenty-five percent over the maximum;

(g) Twenty-five dollars for carrying a load on a single axle or a group of axles of five percent or less over the maximum;

(h) Seventy-five dollars for carrying a load on a single axle or a group of axles of more than five percent but not more than ten percent over the maximum;

(i) One hundred fifty dollars for carrying a load on a single axle or a group of axles of more than ten percent but not more than fifteen percent over the maximum;

(j) Three hundred twenty-five dollars for carrying a load on a single axle or a group of axles of more than fifteen percent but not more than twenty percent over the maximum;

(k) Five hundred dollars for carrying a load on a single axle or a group of axles of more than twenty percent but not more than twenty-five percent over the maximum;

(l) Seven hundred fifty dollars for carrying a load on a single axle or group of axles of more than twenty-five percent but not more than thirty percent over the maximum;

(m) Nine hundred fifty dollars for carrying a load on a single axle or group of axles of more than thirty percent but not more than thirty-five percent over the maximum;

(n) One thousand one hundred fifty dollars for carrying a load on a single axle or group of axles of more than thirty-five percent but not more than forty percent over the maximum;

(o) Fifteen hundred fifty dollars for carrying a load on a single axle or group of axles of more than forty percent but not more than forty-five percent over the maximum;

(p) Two thousand dollars for carrying a load on a single axle or group of axles of more than forty-five percent but not more than fifty percent over the maximum; and

(q) Twenty-five hundred dollars for carrying a load on a single axle or group of axles of more than fifty percent over the maximum.

(2) No person shall be guilty of multiple offenses when the violations (a) involve the excess weight of an axle or a group of axles and the excess weight of the gross load of a single vehicle or (b) occur on the National System of Interstate and Defense Highways.

**Source:** Laws 1953, c. 134, § 4, p. 420; Laws 1963, c. 226, § 2, p. 710; Laws 1969, c. 318, § 3, p. 1155; Laws 1973, LB 491, § 4; R.S.Supp.,1973, § 39-723.06; Laws 1974, LB 920, § 4; Laws 1977, LB 41, § 33; Laws 1979, LB 112, § 2; Laws 1984, LB 726, § 5; Laws 1985, LB 553, § 7; R.S.1943, (1988), § 39-6,184; Laws 1993, LB 370, § 392.

Complaints filed were within jurisdiction of the justice court.  
Conkling v. DeLany, 167 Neb. 4, 91 N.W.2d 250 (1958).

**60-6,297 Disabled vehicles; length, load, width, height limitations; exception; special single trip permit; liability.**

(1) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed to a place of secure safekeeping by any wrecker or tow truck performing a wrecker or towing service.

(2) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a single vehicle that is disabled or wrecked when the single vehicle is towed by any wrecker or tow truck to a place for repair or to a point of storage or is being transported by a covered heavy-duty tow and recovery vehicle.

(3)(a) Section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles permitted by the Department of Transportation for overwidth, overheight, overlength, or overweight operation that is disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed if the vehicle or combination of vehicles is towed by any wrecker or tow truck performing a wrecker or towing service to the first or nearest place of secure safekeeping off the traveled portion of the highway that can accommodate the parking of such disabled vehicle or combination of vehicles.

(b) After the vehicle or combination of vehicles has been towed to a place of secure safekeeping, such vehicle or combination of vehicles shall then be operated in compliance with section 60-6,288, subsection (1) of section

60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294, or the vehicle or combination of vehicles shall acquire a special single trip permit from the department for the movement of the overwidth, overheight, overlength, or overweight vehicle or combination of vehicles beyond the first or nearest place of secure safekeeping to its intended destination.

(4) The owners, lessees, and operators of any wrecker or tow truck exceeding the width, height, length, or weight restrictions while towing a disabled or wrecked vehicle or combination of vehicles shall be jointly and severally liable for any injury or damages that result from the operation of the wrecker or tow truck while exceeding such restrictions.

(5) If a disabled or wrecked vehicle or combination of vehicles is towed, the wrecker or tow truck shall be connected with the air brakes and brake lights of the towed vehicle or combination of vehicles.

(6) For purposes of this section:

(a) Covered heavy-duty tow and recovery vehicle means a vehicle that (i) is transporting a disabled vehicle on the National System of Interstate and Defense Highways from the place where the vehicle became disabled to the nearest appropriate repair facility, including such segments of highways off the National System of Interstate and Defense Highways that connect the nearest appropriate repair facility to the National System of Interstate and Defense Highways and adjoining portions of the state highway system for reasonable access to terminals and facilities for food, fuel, repairs, and rest, as designated by the Department of Transportation, and (ii) has a gross vehicle weight that is equal to or exceeds the gross vehicle weight of the disabled vehicle being transported;

(b) Place of secure safekeeping means a location off the traveled portion of the highway that can accommodate the parking of the disabled or wrecked vehicle or combination of vehicles in order for the vehicle or combination of vehicles to be repaired or moved to a point of storage; and

(c) Wrecker or tow truck means an emergency commercial vehicle equipped, designed, and used to assist or render aid and transport or tow a disabled vehicle or combination of vehicles from a highway or right-of-way to a place of secure safekeeping.

**Source:** Laws 1982, LB 383, § 3; R.S.1943, (1988), § 39-6,180.02; Laws 1993, LB 370, § 393; Laws 2003, LB 137, § 1; Laws 2005, LB 82, § 4; Laws 2011, LB35, § 1; Laws 2017, LB339, § 223; Laws 2020, LB944, § 71.

**60-6,298 Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.**

(1)(a) The Department of Transportation or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, except that any combination with two or more cargo-carrying units, not including the truck-tractor, also known as a longer combination vehicle, may only operate for a distance up to seventy miles loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile or farm storage to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans or dry peas and lentils from the field where harvested to storage or market when dry beans or dry peas and lentils are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288;

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle; or

(vi) To transport during daylight hours divisible loads of livestock forage in bale form which do not exceed twelve feet in width, except that the permit shall not allow transport on holidays.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state

highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation. The permit shall include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars. Permits issued pursuant to such subdivision shall be valid for thirty days and shall be renewable four times for a total number of days not to exceed one hundred fifty days per calendar year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

**Source:** Laws 1957, c. 156, § 4, p. 565; Laws 1961, c. 183, § 1, p. 546; Laws 1963, c. 220, § 3, p. 695; Laws 1963, c. 226, § 1, p. 708; Laws 1965, c. 214, § 1, p. 627; Laws 1967, c. 235, § 1, p. 627; Laws 1972, LB 1337, § 1; Laws 1973, LB 152, § 1; R.S.Supp.,1973, § 39-722.01; Laws 1975, LB 306, § 2; Laws 1979, LB 287, § 1; Laws 1980, LB 842, § 1; Laws 1981, LB 285, § 3; Laws 1986, LB 122, § 1; Laws 1986, LB 833, § 1; R.S.1943, (1988), § 39-6,181; Laws 1993, LB 176, § 1; Laws 1993, LB 370, § 394; Laws 1994, LB 1061, § 4; Laws 1995, LB 467, § 15; Laws 1996, LB 1306, § 2; Laws 1997, LB 122, § 1; Laws 1997, LB 261, § 1; Laws 2000, LB 1361, § 9; Laws 2001, LB 376, § 5; Laws 2003, LB 563, § 33; Laws 2005, LB 82, § 5; Laws 2005, LB 274, § 246; Laws 2010, LB820, § 2; Laws 2011, LB35, § 2; Laws 2012, LB841, § 1; Laws 2012, LB997, § 4; Laws 2013, LB117, § 1; Laws 2017, LB339, § 224; Laws 2018, LB909, § 107; Laws 2020, LB803, § 23; Laws 2020, LB931, § 1.

#### Cross References

**Rules and regulations of Department of Transportation**, adoption, penalty, see sections 39-102 and 39-103.

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).

Under the permit exemption contained in subsection (1) of this section, the language "access to points on (dustless-surfaced) highways" means that if there is no other route available, one may move the qualified equipment over a dustless-surfaced highway. *State v. Quandt*, 234 Neb. 402, 451 N.W.2d 272 (1990).

#### **60-6,299 Permit to move building; limitations; application; Department of Transportation; rules and regulations; violation; penalty.**

(1) The Department of Transportation may issue permits for vehicles moving a building or objects requiring specialized moving dollies. Such permits shall

allow the vehicles transporting buildings or objects requiring specialized dollies to operate on highways under the jurisdiction of the department, excluding any portion of the National System of Interstate and Defense Highways. Such permit shall specify the maximum allowable width, length, height, and weight of the building to be transported, the route to be used, and the hours during which such building or object may be transported. Such permit shall clearly state that the applicant is not authorized to manipulate overhead high voltage lines or conductors or other such components, including electric utility poles, and that the applicant shall be guilty of a Class II misdemeanor for any violation of this section or of the notification requirements of section 60-6,288.01. Any vehicle moving a building or object requiring specialized moving dollies shall be escorted by another vehicle or vehicles in the manner determined by the department. Such vehicles shall travel at a speed which is not in excess of five miles per hour when carrying loads which are in excess of the maximum gross weight specified by law by more than twenty-five percent. The permit shall not be issued for travel on a state highway containing a bridge or structure which is structurally inadequate to carry such building or object as determined by the department. The department may prescribe conditions of operation of such vehicle when necessary to assure against damage to the road foundations, surfaces, or structures and require such security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(2) The application for any such permit shall (a) specifically describe the vehicle, (b) specifically describe the load to be moved, (c) include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities, and (d) whenever possible, describe the particular highways for which the permit is requested. The company or individual shall maintain a copy of the permit in each vehicle moving a building or object requiring specialized moving dollies which shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. The fee for such permit shall be ten dollars.

(3) The department shall adopt and promulgate rules and regulations governing the issuance of the permits. Such rules and regulations shall include, but not be limited to, driver qualifications, equipment selection, hours of operation, weather conditions, road conditions, determination of any damage caused to highways or bridges, cutting or trimming of trees, removal or relocation of signs or other property of the state, raising or lowering of electric supply and communication lines, and such other safety considerations as the department deems necessary.

(4) Any person who violates the terms of a permit issued pursuant to this section or otherwise violates this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1985, LB 553, § 1; R.S.1943, (1988), § 39-6,181.01; Laws 1993, LB 370, § 395; Laws 2012, LB997, § 5; Laws 2016, LB973, § 5; Laws 2017, LB339, § 225.



**60-6,300 Vehicles; excess load prohibited; exception; violation; penalty.**

(1) It shall be unlawful to operate upon the public highways of this state any truck, truck-tractor, or trailer that weighs in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds, but this section shall not apply to any truck, truck-tractor, or trailer being operated under a special permit issued pursuant to section 60-6,298 if the vehicle is properly registered pursuant to such section.

(2)(a) Any person operating any truck, truck-tractor, or trailer in violation of this section shall be guilty of a traffic infraction and shall, upon conviction, be fined twenty-five dollars for each one thousand pounds or fraction thereof in excess of the weight allowed to be carried under this section with tolerance.

(b) In lieu of issuing a citation to an operator under subdivision (2)(a) of this section, the Superintendent of Law Enforcement and Public Safety may assess the owner of the vehicle a civil penalty for each violation of this section in an amount equal to twenty-five dollars for each one thousand pounds or fraction thereof in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds. The superintendent shall issue an order imposing a penalty under this subdivision in the same manner as an order issued under section 75-369.04 and any rules and regulations adopted and promulgated under section 75-368 and any applicable federal rules and regulations.

**Source:** Laws 1933, c. 105, § 5, p. 426; Laws 1939, c. 47, § 1, p. 208; Laws 1941, c. 125, § 2, p. 481; C.S.Supp.,1941, § 39-1193; R.S. 1943, § 39-723; Laws 1947, c. 147, § 2(4), p. 406; Laws 1953, c. 134, § 2, p. 418; Laws 1969, c. 318, § 2, p. 1155; R.S.Supp.,1972, § 39-723.03; Laws 1979, LB 287, § 2; Laws 1984, LB 726, § 3; Laws 1986, LB 783, § 1; R.S.1943, (1988), § 39-6,182; Laws 1993, LB 370, § 396; Laws 2013, LB398, § 1.

Section applies to any motor truck carrying a load. *Aulner v. State*, 160 Neb. 741, 71 N.W.2d 305 (1955).

Where load exceeds maximum allowed plus tolerance, penalty is based on overload. *State v. Luttrell*, 159 Neb. 641, 68 N.W.2d 332 (1955).

**60-6,301 Vehicles; overload; reduce or shift load; exceptions; permit fee; warning citation; when.**

When any motor vehicle, semitrailer, or trailer is operated upon the highways of this state carrying a load in excess of the maximum weight permitted by section 60-6,294, the load shall be reduced or shifted to within such maximum tolerance before being permitted to operate on any public highway of this state, except that:

(1) If any motor vehicle, semitrailer, or trailer exceeds the maximum load on only one axle, only one tandem axle, or only one group of axles when (a) the distance between the first and last axle of such group of axles is twelve feet or less, (b) the excess axle load is no more than five percent in excess of the maximum load for such axle, tandem axle, or group of axles permitted by such section, while the vehicle or combination of vehicles is within the maximum gross load, and (c) the load on such vehicle is such that it can be shifted or the configuration of the vehicle can be changed so that all axles, tandem axle, or groups of axles are within the maximum permissible limit for such axle, tandem axle, or group of axles, such shift or change of configuration may be made without penalty;

(2) Any motor vehicle, semitrailer, or trailer carrying only a load of livestock may exceed the maximum load as permitted by such section on only one axle,

only one tandem axle, or only one group of axles when the distance between the first and last axle of the group of axles is six feet or less if the excess load on the axle, tandem axle, or group of axles is caused by a shifting of the weight of the livestock by the livestock and if the vehicle or combination of vehicles is within the maximum gross load as permitted by such section;

(3) With a permit issued by the Department of Transportation or the Nebraska State Patrol, a truck with an enclosed body and a compacting mechanism, designed and used exclusively for the collection and transportation of garbage or refuse, may exceed the maximum load as permitted by such section by no more than twenty percent on only one axle, only one tandem axle, or only one group of axles when the vehicle is laden with garbage or refuse if the vehicle is within the maximum gross load as permitted by such section. There shall be a permit fee of ten dollars per month or one hundred dollars per year. The permit may be issued for one or more months up to one year, and the term of applicability shall be stated on the permit;

(4) Any motor vehicle, semitrailer, or trailer carrying any kind of a load, including livestock, which exceeds the legal maximum gross load by five percent or less may proceed on its itinerary and unload the cargo carried thereon to the maximum legal gross weight at the first unloading facility on the itinerary where the cargo can be properly protected. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator; and

(5) Any motor vehicle, semitrailer, or trailer carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile or farm storage to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any tandem axle, group of axles, and gross weight. Any truck with no more than a single rear axle carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile or farm storage to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any single axle and gross weight. The owner or a representative of the owner of the agricultural product shall furnish the driver of the loaded vehicle a signed statement of origin and destination.

Nothing in this section shall be construed to permit to be operated on the National System of Interstate and Defense Highways any vehicle or combination of vehicles which exceeds any of the weight limitations applicable to such system as contained in section 60-6,294.

If the maximum legal gross weight or axle weight of any vehicle is exceeded by five percent or less and the arresting peace officer or carrier enforcement officer has reason to believe that such excessive weight is caused by snow, ice, or rain, the officer may issue a warning citation to the operator.

**Source:** Laws 1953, c. 134, § 5, p. 420; Laws 1955, c. 150, § 1, p. 446; Laws 1963, c. 226, § 3, p. 710; Laws 1969, c. 318, § 4, p. 1156; Laws 1973, LB 491, § 5; R.S.Supp.,1973, § 39-723.07; Laws 1974, LB 920, § 5; Laws 1976, LB 823, § 1; Laws 1977, LB 427, § 3; Laws 1980, LB 785, § 4; Laws 1984, LB 726, § 6; Laws

1986, LB 833, § 2; R.S.1943, (1988), § 39-6,185; Laws 1993, LB 370, § 397; Laws 2000, LB 1361, § 10; Laws 2007, LB148, § 1; Laws 2017, LB339, § 226; Laws 2020, LB931, § 2.

**60-6,302 Connection device; unlawful repositioning; violation; penalty.**

Except for fifth-wheel repositioning done pursuant to section 60-6,301, it shall be unlawful to reposition the fifth-wheel connection device of a truck-tractor and semitrailer combination while such combination is carrying cargo and on the state highway system. Any person violating this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1987, LB 39, § 1; R.S.1943, (1988), § 39-6,185.01; Laws 1993, LB 370, § 398.

**60-6,303 Vehicles; overloading; powers of peace officer or carrier enforcement officer; violation; penalty.**

Any peace officer or carrier enforcement officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the vehicle and load. Upon weighing a vehicle and load, if the officer determines that the weight on any axle exceeds the lawful weight, that the weight on any group of two consecutive axles exceeds their lawful weight, or that the weight is unlawful on any axle or group of consecutive axles on any road restricted in accordance with section 60-6,294, the officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under such section. All material so unloaded shall be cared for by the owner or driver of such vehicle at the risk of such owner or driver.

For purposes of this section, lawful weight shall mean the maximum weight permitted by section 60-6,294.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing or who refuses, when directed by a peace officer or carrier enforcement officer upon a weighing of the vehicle, to stop the vehicle and otherwise comply with the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1953, c. 131, § 10, p. 407; Laws 1969, c. 318, § 5, p. 1157; R.R.S.1943, § 39-723.08; Laws 1984, LB 726, § 7; R.S.1943, (1988), § 39-6,186; Laws 1993, LB 370, § 399.

**60-6,304 Load; contents; requirements; vehicle that contained livestock; spill prohibited; violation; penalty.**

(1)(a) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.

(b) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material

protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.

(c) Except as provided in subsection (3) of this section for commercial motor vehicles and commercial trailers, no person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.

(d) Any person who violates any provision of this subsection is guilty of a Class IV misdemeanor.

(2)(a) No person operating any vehicle that contained livestock, but still contains the manure or urine of livestock, on any highway located within the corporate limits of a city of the metropolitan class, shall spill manure or urine from the vehicle.

(b) Any person who violates this subsection is guilty of a Class IV misdemeanor and shall be assessed a minimum fine of at least two hundred fifty dollars.

(3)(a) No person shall drive or move a commercial motor vehicle or commercial trailer upon any highway unless the cargo or contents carried by the commercial motor vehicle or commercial trailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the commercial motor vehicle or commercial trailer or in the distributing or securing of the cargo or contents carried by the commercial motor vehicle or commercial trailer shall be secured to prevent cargo or contents falling from the vehicle. The structures, systems, parts, and components used to secure the cargo or contents shall be in proper working order with no damaged or weakened components that affect performance so as to cause the cargo or contents to fall from the commercial motor vehicle or commercial trailer. The means of securement to the commercial motor vehicle or commercial trailer shall be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to ensure that cargo or contents will not fall from the commercial motor vehicle or commercial trailer.

(b)(i) Violation of this subsection is an infraction, and the person driving or moving a commercial motor vehicle or commercial trailer in violation of this subsection shall be fined two hundred dollars for the first offense and five hundred dollars for a second or subsequent offense.

(ii) In addition to the issuance of a citation to an operator under subdivision (b)(i) of this subsection, the Superintendent of Law Enforcement and Public Safety may assess the owner of the vehicle a civil penalty for each violation of this subsection of one thousand dollars. The superintendent shall issue an order imposing a penalty under this subdivision in the same manner as an order

issued under section 75-369.04 and any rules and regulations adopted and promulgated under section 75-368 and any applicable federal rules and regulations.

(c) For purposes of this subsection:

- (i) Commercial motor vehicle has the same meaning as in section 60-316; and
- (ii) Commercial trailer has the same meaning as in section 60-317.

**Source:** Laws 1969, c. 304, § 1, p. 1095; R.S.Supp.,1972, § 39-735.02; Laws 1974, LB 593, § 7; Laws 1977, LB 41, § 21; R.S.1943, (1988), § 39-6,129; Laws 1993, LB 370, § 400; Laws 1993, LB 575, § 28; Laws 2002, LB 1105, § 463; Laws 2007, LB147, § 1; Laws 2014, LB174, § 2; Laws 2019, LB698, § 1.

(z) SPECIAL RULES FOR LIVESTOCK FORAGE VEHICLES

**60-6,305 Livestock forage vehicle; restrictions; permit; fee.**

(1) For purposes of this section, livestock forage vehicle shall mean a vehicle with chassis which has a special implement bolted, mounted, or attached thereto for loading, unloading, and moving livestock forage.

(2) All livestock forage vehicles shall:

- (a) Not exceed a length of sixty-five feet, extreme overall dimensions inclusive of bumpers and load;
- (b) Not exceed a width of eighteen feet;
- (c) Not exceed a height of eighteen feet, either for equipment alone or for equipment and load combined. Such vehicles shall comply with subsection (2) of section 60-6,289; and
- (d) Only be operated during hours of daylight.

(3) No person shall operate a livestock forage vehicle which carries unbaled livestock forage at a speed in excess of the following limits:

- (a) Twenty-five miles per hour in any residential district;
- (b) Twenty miles per hour in any business district; and
- (c) Fifty miles per hour while upon any highway other than a freeway outside a business or residential district.

The speed limits provided in this section may be altered as provided in section 60-6,190.

(4) The load of baled livestock forage shall be securely fastened to the vehicle at all times while it is on a highway. Any person who transports unbaled or baled livestock forage shall be responsible for all damages occurring to other persons or property as a result of his or her negligence during the transportation of the livestock forage and shall also be responsible for cleaning a highway of unbaled or baled livestock forage which falls or is dropped from the load onto a highway during the moving of the livestock forage.

(5) Any person who uses equipment which exceeds the length, width, and height provisions set forth in subsection (2) of this section shall first obtain a permit from the county sheriff of the county in which he or she resides. The permit shall be valid to carry loads twenty feet wide in such county and in adjacent counties. Such permit shall be furnished to the sheriff's office by the Department of Motor Vehicles and shall be valid for one calendar year. The fee

for such permit shall be ten dollars. Any person securing such a permit shall keep a record of all activity covered by such permit, which record shall be available to the issuing sheriff, his or her deputies and agents, or members of the Nebraska State Patrol at all times. The record shall include dates, items moved, route, and other pertinent information.

**Source:** Laws 1973, LB 45, § 100; Laws 1978, LB 750, § 1; Laws 1989, LB 21, § 1; Laws 1990, LB 369, § 2; R.S.Supp.,1992, § 39-6,100; Laws 1993, LB 370, § 401.

(aa) SPECIAL RULES FOR MOTORCYCLES

**60-6,306 Nebraska Rules of the Road; applicability to persons operating motorcycles.**

(1) Any person who operates a motorcycle shall have all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under the Nebraska Rules of the Road except for special motorcycle regulations in the rules and except for those provisions of the rules which by their nature can have no application.

(2) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1973, LB 45, § 92; R.S.1943, (1988), § 39-692; Laws 1993, LB 370, § 402; Laws 2018, LB909, § 108.

**Cross References**

**Helmet requirements,** see sections 60-6,278 to 60-6,282.

**60-6,307 Restrictions on operating motorcycles.**

(1) Any person who operates a motorcycle shall ride only upon a permanent and regular seat attached to the motorcycle. A person operating a motorcycle shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat, if designed for two persons, or upon another seat firmly attached to the motorcycle to the rear or side of the operator.

(2) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward.

(3) No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him or her from keeping both hands on the handlebars.

(4) No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the motorcycle or the view of the operator.

(5) Any motorcycle which carries a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(6) No person shall operate any motorcycle with handlebars more than fifteen inches above the mounting point of the handlebars.

(7) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1973, LB 45, § 93; R.S.1943, (1988), § 39-693; Laws 1993, LB 370, § 403; Laws 2018, LB909, § 109.

**60-6,308 Operating motorcycles on roadways laned for traffic; prohibited acts.**

(1) A motorcycle shall be entitled to full use of a traffic lane of any highway, and no vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of such lane, except that motorcycles may be operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by a vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) of this section shall not apply to peace officers in the performance of their official duties.

(6) No person who rides upon a motorcycle shall attach himself, herself, or the motorcycle to any other vehicle on a roadway.

(7) For purposes of this section, motorcycle does not include an auticycle.

**Source:** Laws 1973, LB 45, § 94; R.S.1943, (1988), § 39-694; Laws 1993, LB 370, § 404; Laws 2018, LB909, § 110.

## (bb) SPECIAL RULES FOR MOPEDS

**60-6,309 Moped; statutes; applicable.**

Mopeds, their owners, and their operators shall be subject to the Motor Vehicle Operator's License Act, but shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 1979, LB 23, § 3; Laws 1986, LB 731, § 2; R.S.1943, (1988), § 39-6,196; Laws 1993, LB 370, § 405; Laws 2005, LB 274, § 247; Laws 2005, LB 276, § 104.

## Cross References

**Motor Vehicle Certificate of Title Act**, see section 60-101.

**Motor Vehicle Operator's License Act**, see section 60-462.

**Motor Vehicle Registration Act**, see section 60-301.

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-6,310 Moped; operation; license required.**

No person shall operate a moped upon a highway unless such person has a valid operator's license.

**Source:** Laws 1979, LB 23, § 4; R.S.1943, (1988), § 39-6,197; Laws 1993, LB 370, § 406; Laws 2008, LB756, § 27.

**60-6,311 Moped; operator; Nebraska Rules of the Road; applicable.**

(1) Any person who rides a moped upon a roadway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle under the Nebraska Rules of the Road except for special moped regulations in the rules and except for those provisions of the rules which by their nature can have no application.

(2) Regulations applicable to mopeds shall apply whenever a moped is operated upon any highway or upon any path set aside by the Department of Transportation or a local authority for the use of mopeds.

**Source:** Laws 1979, LB 23, § 5; R.S.1943, (1988), § 39-6,198; Laws 1993, LB 370, § 407; Laws 2017, LB339, § 227.

**60-6,312 Moped; restrictions on operation.**

(1) Any person who operates a moped shall ride only upon a permanent and regular seat attached to the moped. A person operating a moped shall not carry any other person nor shall any other person ride on a moped unless such moped is designed by the manufacturer to carry more than one person.

(2) A person shall ride upon a moped only while sitting astride the seat, facing forward.

(3) No person shall operate a moped while carrying any package, bundle, or other article which prevents him or her from keeping both hands on the handlebars.

(4) No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the moped or the view of the operator.

(5) Any moped which carries a passenger shall be equipped with footrests for such passenger.

(6) No person shall operate any moped with handlebars more than fifteen inches above the mounting point of the handlebars.

**Source:** Laws 1979, LB 23, § 6; R.S.1943, (1988), § 39-6,199; Laws 1993, LB 370, § 408.

**60-6,313 Operating mopeds on roadways laned for traffic; prohibited acts.**

(1) A moped shall be entitled to full use of a traffic lane of any highway with an authorized speed limit of forty-five miles per hour or less, and no vehicle shall be operated in such a manner as to deprive any moped of the full use of such lane, except that mopeds and motorcycles may be operated two abreast in a single lane.

(2) No person shall operate a moped between lanes of traffic or between adjacent lines or rows of vehicles.

(3) Mopeds shall not be operated more than two abreast in a single lane.

(4) Any person who operates a moped on a roadway with an authorized speed limit of more than forty-five miles per hour shall ride as near to the right side of the roadway as practicable and shall not ride more than single file.

(5) No person who rides upon a moped shall attach himself, herself, or the moped to any other vehicle on a roadway.

(6) Mopeds shall not be operated on the National System of Interstate and Defense Highways or on sidewalks.

(7) Notwithstanding the maximum speed limits in excess of twenty-five miles per hour established in section 60-6,186, no person shall operate any moped at a speed in excess of thirty miles per hour.



(8) For purposes of this section, motorcycle does not include an autocycle.

**Source:** Laws 1979, LB 23, § 7; R.S.1943, (1988), § 39-6,200; Laws 1993, LB 370, § 409; Laws 2018, LB909, § 111.

**Cross References**

**Operator's license**, assessment of points for speeding, see section 60-4,182.

(cc) SPECIAL RULES FOR BICYCLES

**60-6,314 Nebraska Rules of the Road; applicability to persons operating bicycles.**

(1) Any person who operates a bicycle upon a highway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle under the Nebraska Rules of the Road except for special bicycle regulations in the rules, except for those provisions of the rules which by their nature can have no application, and except as provided in section 60-6,142.

(2) Regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside by the Department of Transportation or a local authority for the exclusive use of bicycles.

**Source:** Laws 1973, LB 45, § 86; R.S.1943, (1988), § 39-686; Laws 1993, LB 370, § 410; Laws 1993, LB 575, § 19; Laws 2017, LB339, § 228.

**Cross References**

**Hand and arm signals**, see sections 60-6,162 and 60-6,163.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. *McFarland v. King*, 216 Neb. 92, 341 N.W.2d 920 (1983).

A bicyclist, pursuant to this section, is entitled to all the rights and subject to all the rules of the road governing the driver of a vehicle. *Luellman v. Ambroz*, 2 Neb. App. 855, 516 N.W.2d 627 (1994).

**60-6,315 Riding of bicycles; prohibited acts.**

(1) Any person who rides a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(2) Any person who rides a bicycle shall not remove his or her feet from the pedals and shall have at least one hand on the handlebars at all times.

(3) Any person who operates a bicycle shall not carry any package, bundle, or article which prevents such operator from keeping at least one hand upon the handlebars.

(4) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

**Source:** Laws 1973, LB 45, § 88; R.S.1943, (1988), § 39-688; Laws 1993, LB 370, § 411.

**60-6,316 Bicycles; clinging to vehicles; prohibited.**

Any person who rides upon any bicycle shall not attach himself, herself, or the bicycle to any vehicle upon a roadway.

**Source:** Laws 1973, LB 45, § 89; R.S.1943, (1988), § 39-689; Laws 1993, LB 370, § 412.

**60-6,317 Bicycles on roadways and bicycle paths; general rules; regulation by local authority.**

(1)(a) Any person who operates a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under conditions then existing shall ride as near to the right-hand curb or right-hand edge of the roadway as practicable except when:

(i) Overtaking and passing another bicycle or vehicle proceeding in the same direction;

(ii) Preparing for a left turn onto a private road or driveway or at an intersection;

(iii) Reasonably necessary to avoid conditions that make it unsafe to continue along the right-hand curb or right-hand edge of the roadway, including fixed or moving objects, stopped or moving vehicles, bicycles, pedestrians, animals, or surface hazards;

(iv) Riding upon a lane of substandard width which is too narrow for a bicycle and a vehicle to travel safely side by side within the lane; or

(v) Lawfully operating a bicycle on the paved shoulders of a highway included in the state highway system as provided in section 60-6,142.

(b) Any person who operates a bicycle upon a roadway with a posted speed limit of thirty-five miles per hour or less on which traffic is restricted to one direction of movement and which has two or more marked traffic lanes may ride as near to the left-hand curb or left-hand edge of the roadway as practicable.

(c) Whenever a person operating a bicycle leaves the roadway to ride on the paved shoulder or leaves the paved shoulder to enter the roadway, the person shall clearly signal his or her intention and yield the right-of-way to all other vehicles.

(2) No bicyclist shall suddenly leave a curb or other place of safety and walk or ride into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Any person who operates a bicycle upon a highway shall not ride more than single file except on paths or parts of highways set aside for the exclusive use of bicycles.

(4) A bicyclist riding a bicycle on a sidewalk or across a roadway or shoulder in a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances but shall yield the right-of-way to pedestrians. Nothing in this subsection relieves the bicyclist or the driver of a vehicle from the duty to exercise care.

(5) A local authority may by ordinance further regulate the operation of bicycles and may provide for the registration and inspection of bicycles.

**Source:** Laws 1973, LB 45, § 90; R.S.1943, (1988), § 39-690; Laws 1993, LB 370, § 413; Laws 1993, LB 575, § 20; Laws 2016, LB716, § 3.

**60-6,318 Equipment on bicycles; lights; brakes.**

(1) When in use at nighttime, a bicycle shall be equipped with a light visible from a distance of at least five hundred feet to the front on a clear night and with a red reflector on the rear of a type which is approved by the Department of Motor Vehicles or a local authority and which is visible on a clear night from

all distances between one hundred feet and six hundred feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. A red light visible from a distance of five hundred feet to the rear may be used in addition to such red reflector.

(2) Any bicycle used on a highway shall be equipped with a brake or brakes which will enable the operator to stop the bicycle within twenty-five feet of the point of braking when moving at a speed of ten miles per hour on dry, level, clean pavement.

**Source:** Laws 1973, LB 45, § 91; R.S.1943, (1988), § 39-691; Laws 1993, LB 370, § 414; Laws 1993, LB 575, § 21.

**60-6,319 Bicycles; reflective device or material; retail sale; requirements; violation; penalty.**

No commercial dealer shall sell or offer to sell at retail any bicycle unless such bicycle is equipped with pedals which display a white or amber reflective device or material on both the front and rear surfaces of the pedal and such reflective surface is visible during the hours of darkness from four hundred feet when viewed from the front or rear under low beam headlights of a motor vehicle under normal atmospheric conditions.

All bicycles shall also be equipped with tires bearing a white or silver retroreflective material on each side or a wide-angle reflector mounted on the spokes of each wheel. Such retroreflective material shall be at least three-sixteenths of an inch wide, shall be affixed as an integral part of the tire or wheel, and shall remain effective for the life of the tire or wheel. The spoke-mounted, wide-angle reflector devices shall have a reflective surface of at least two square inches and shall be clear, amber, or red in color. Both the retroreflective tires and wide-angle spoke reflectors shall be visible during the hours of darkness from four hundred feet when viewed under low beam headlights of a motor vehicle under normal atmospheric conditions when the bicycle is traveling at a ninety degree right angle to the direction of travel of the motor vehicle and is directly in front of such motor vehicle. Such reflective devices shall remain visible when the bicycle is turned forty degrees in either direction from such angle and crosses directly in front of such motor vehicle at a distance of four hundred feet.

No commercial dealer shall sell or offer to sell at retail any bicycle which does not comply with this section. Any person who violates this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1974, LB 827, § 1; Laws 1976, LB 628, § 1; R.S.1943, (1988), § 39-6,138.01; Laws 1993, LB 370, § 415.

(dd) SPECIAL RULES FOR SNOWMOBILES

**60-6,320 Snowmobiles; operate, defined.**

For purposes of sections 60-6,320 to 60-6,346, operate means to ride in or on and control the operation of a snowmobile.

**Source:** Laws 1971, LB 330, § 1; Laws 1972, LB 1149, § 1; R.S.1943, (1988), § 60-2001; Laws 1993, LB 121, § 392; Laws 1993, LB 370, § 416; Laws 2005, LB 274, § 248.

**60-6,321 Repealed. Laws 2005, LB 274, § 286.**

**60-6,322 Repealed. Laws 2005, LB 274, § 286.**

**60-6,323 Repealed. Laws 2005, LB 274, § 286.**

**60-6,324 Repealed. Laws 2005, LB 274, § 286.**

**60-6,325 Repealed. Laws 2005, LB 274, § 286.**

**60-6,326 Repealed. Laws 2005, LB 274, § 286.**

**60-6,327 Repealed. Laws 2005, LB 274, § 286.**

**60-6,328 Repealed. Laws 2005, LB 274, § 286.**

**60-6,329 Repealed. Laws 2005, LB 274, § 286.**

**60-6,330 Repealed. Laws 2005, LB 274, § 286.**

**60-6,331 Repealed. Laws 2005, LB 274, § 286.**

**60-6,332 Repealed. Laws 2005, LB 274, § 286.**

**60-6,333 Repealed. Laws 2005, LB 274, § 286.**

**60-6,334 Snowmobile operation; Game and Parks Commission; rules and regulations.**

The Game and Parks Commission shall establish rules and regulations for:

(1) The operation of snowmobiles upon designated state-controlled or state-operated lakes within the State of Nebraska during the period of time when the lake is frozen and safe for the use of snowmobiles; and

(2) The operation of snowmobiles on established snowmobile courses or trails within public parks or on public land in this state owned or leased by the state.

**Source:** Laws 1977, LB 230, § 10; R.S.1943, (1988), § 60-2012.01; Laws 1993, LB 370, § 430.

**60-6,335 Snowmobile operation; regulation; equipment; permission of land-owner.**

(1) No person shall operate a snowmobile upon any highway except as provided in sections 60-6,320 to 60-6,346. Subject to regulation by the Department of Transportation and by local authorities, in their respective jurisdictions, a snowmobile may be operated on the roadway of any highway, on the right-hand side of such roadway and in the same direction as the highway traffic, except that no snowmobile shall be operated at any time within the right-of-way of any controlled-access highway within this state.

(2) A snowmobile may make a direct crossing of a highway at any hour of the day if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The snowmobile is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The driver yields the right-of-way to all oncoming traffic which constitutes an immediate hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) When the crossing is made between sunset and sunrise or in conditions of reduced visibility, both the headlights and taillights are on.

(3) No snowmobile shall be operated upon a highway unless equipped with at least one headlight and one taillight, with reflector material of a minimum area of sixteen square inches mounted on each side forward of the handlebars, and with brakes.

(4) A snowmobile may be operated upon a highway other than as provided by subsection (2) of this section in an emergency during the period of time when and at locations where snow upon the roadway renders travel by automobile impractical.

(5) Unless otherwise provided in sections 60-6,320 to 60-6,346, all other provisions of Chapter 60 shall apply to the operation of snowmobiles upon highways except for those relating to required equipment and those which by their nature have no application.

(6) No person shall operate a snowmobile upon any private lands without first having obtained permission of the owner, lessee, or operator of such lands.

**Source:** Laws 1971, LB 330, § 13; Laws 1972, LB 1149, § 2; Laws 1977, LB 230, § 11; R.S.1943, (1988), § 60-2013; Laws 1993, LB 370, § 431; Laws 1993, LB 575, § 49; Laws 1995, LB 459, § 4; Laws 2017, LB339, § 229.

**Cross References**

Operation of snowmobile during public emergency or in parades, see section 60-6,348.

**60-6,336 Snowmobile contests; requirements.**

Nothing in sections 60-6,320 to 60-6,346 shall prohibit the use of snowmobiles within the right-of-way of any highway in any international or other sponsored contest. When the proposed use of the right-of-way of any highway is for an international or other sponsored contest:

(1) The sponsoring person or organization shall obtain prior written permission from the governing body having jurisdiction over the highway when such highway is not part of the state highway system; and

(2) The sponsoring person or organization shall comply with subsection (2) of section 39-1359 when such highway is part of the state highway system.

**Source:** Laws 1971, LB 330, § 14; R.S.1943, (1988), § 60-2014; Laws 1993, LB 370, § 432; Laws 2021, LB174, § 32.  
Effective date August 28, 2021.

**60-6,337 Snowmobiles; prohibited acts.**

It shall be unlawful for any person to drive or operate any snowmobile on any public land, ice, snow, park, right-of-way, trail, or course in the following unsafe or harassing ways:

(1) At a rate of speed greater than reasonable or proper under all the surrounding circumstances;

(2) In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;

- (3) While under the influence of alcoholic liquor or of any drug;
- (4) Without a lighted headlight and taillight when required for safety; and
- (5) In any tree nursery or planting in a manner which damages or destroys growing stock.

**Source:** Laws 1971, LB 330, § 15; Laws 1977, LB 230, § 12; R.S.1943, (1988), § 60-2015; Laws 1993, LB 370, § 433.

**60-6,338 Snowmobiles; political subdivisions; regulation; notice; restrictions.**

(1) A county board may by resolution permit the operation of snowmobiles upon the roadway, shoulder, or inside bank or slope of any county highway if safe operation in the ditch or outside bank or slope thereof is impossible, in which case the county board shall cause appropriate notice thereof to be given.

(2) Any county, city, or village may regulate the operation of snowmobiles on public lands, waters, and property under its jurisdiction and on highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice. Such resolutions or ordinances shall not be inconsistent with other provisions of law or with sections 60-6,320 to 60-6,346 and rules and regulations promulgated thereunder, and no such governmental unit may adopt an ordinance which (a) imposes a fee for the use of public land or water under the jurisdiction of either the state or any agency of the state or for the use of any access thereto owned by the state, a county, a city, or a village or (b) requires a snowmobile operator to possess an operator's license while operating a snowmobile.

**Source:** Laws 1971, LB 330, § 16; Laws 1977, LB 230, § 13; R.S.1943, (1988), § 60-2016; Laws 1993, LB 370, § 434.

**60-6,339 Snowmobile; operation; muffler, when required.**

Except as provided in this section, every snowmobile shall be equipped at all times with a muffler in good working order which blends the exhaust noise into the overall snowmobile noise and is in constant operation to prevent excessive or unusual noise. The exhaust system shall not emit or produce a sharp popping or crackling sound.

This section shall not apply to organized races or similar competitive events held on (1) private lands, with the permission of the owner, lessee, or custodian of the land, or (2) public lands, with the consent of the public agency owning the land.

**Source:** Laws 1971, LB 330, § 17; R.S.1943, (1988), § 60-2017; Laws 1993, LB 370, § 435; Laws 1995, LB 459, § 5.

**60-6,340 Operation by person under twelve years of age; operation by person under sixteen years of age; restrictions; snowmobile safety certificate.**

(1) No person under the age of twelve years shall operate a snowmobile in this state unless accompanied by a parent, guardian, or other person over eighteen years of age.

(2) No person over the age of twelve years and under the age of sixteen years shall operate a snowmobile in this state unless such person (a) holds a valid snowmobile safety certificate, (b) is accompanied by a person fourteen years of age or over who holds a valid snowmobile safety certificate, or (c) is accompanied by a person over the age of eighteen years.

(3) The operator of a snowmobile shall not be required to hold an operator's license.

**Source:** Laws 1971, LB 330, § 18; Laws 1977, LB 230, § 14; R.S.1943, (1988), § 60-2018; Laws 1993, LB 370, § 436.

**60-6,341 Snowmobile safety certificate; application; contents; when issued.**

(1) Application for a snowmobile safety certificate shall be made on uniform blanks prepared by the Director of Motor Vehicles.

(2) Such application shall contain all information and questions deemed necessary by the director to insure that the applicant is qualified and possesses reasonable ability to operate a snowmobile.

(3) No snowmobile safety certificate shall be issued until the applicant has appeared before an examiner and satisfied the examiner that the applicant possesses adequate vision and physical ability to operate a snowmobile.

(4) For purposes of this section, examiner shall refer to an examiner of the Department of Motor Vehicles.

**Source:** Laws 1977, LB 230, § 15; R.S.1943, (1988), § 60-2018.01; Laws 1993, LB 370, § 437.

**60-6,342 Snowmobiles; carrying firearms; hunting; unlawful.**

It shall be unlawful for any person to shoot, take, hunt, or kill or attempt to shoot, take, hunt, or kill any wild animal or bird from or with a snowmobile or for any person to carry or possess any shotgun or rimfire rifle while operating or riding on a snowmobile, or for any person to carry or possess any firearm, bow and arrow, or other projectile device on a snowmobile unless such bow and arrow or projectile device is enclosed in a car carrying case or such firearm is unloaded and enclosed in a carrying case.

**Source:** Laws 1971, LB 330, § 20; R.S.1943, (1988), § 60-2020; Laws 1993, LB 370, § 439.

**60-6,343 Snowmobiles; violations; penalty.**

(1) Any person who violates any provision of sections 60-6,320 to 60-6,346 or any rule or regulation promulgated pursuant to such sections shall be guilty of a Class III misdemeanor, and if such person is convicted of a second or subsequent offense within any period of one year, he or she shall be guilty of a Class II misdemeanor.

(2) Any violation of such sections which is also a violation under any other provision of Chapter 60 may be punished under the penalty provisions thereof.

**Source:** Laws 1971, LB 330, § 21; Laws 1977, LB 230, § 16; Laws 1979, LB 149, § 3; R.S.1943, (1988), § 60-2021; Laws 1993, LB 370, § 440.

**60-6,344 Snowmobile owner; prohibited acts.**

It shall be unlawful for the owner of a snowmobile to permit such snowmobile to be operated contrary to the provisions of sections 60-6,320 to 60-6,346

or for purposes of carrying a shotgun or rifle thereon unless such shotgun or rifle is unloaded and encased.

**Source:** Laws 1971, LB 330, § 19; R.S.1943, (1988), § 60-2019; Laws 1993, LB 370, § 438.

**60-6,345 Snowmobile; confiscation; sale; proceeds; disposition.**

A peace officer shall seize any snowmobile used for the purpose of gaining access to property for the purpose of committing a felony thereon. Any snowmobile seized pursuant to this section shall be held, subject to the order of the district court of the county in which such felony was committed, and shall be confiscated after conviction of the person from whom the snowmobile was seized and disposed of by public auction which shall be conducted by the sheriff of the county in which such conviction occurred. The proceeds from the sale of a confiscated snowmobile shall be remitted to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 1971, LB 330, § 22; Laws 1977, LB 230, § 17; R.S.1943, (1988), § 60-2022; Laws 1993, LB 370, § 441.

**60-6,346 Snowmobile operation; accident; requirements.**

(1) The operator of a snowmobile involved in a collision, accident, or other casualty occurring on any public land, ice, snow, park, right-of-way, trail, or course shall give his or her name and address and the number of such snowmobile in writing to any injured person and to the owner of any property damaged in such collision, accident, or other casualty.

(2) When a collision, accident, or other casualty involving a snowmobile results in death or injury to a person or damage to property in excess of one hundred dollars, the operator of such snowmobile shall within ten days file with the Director of Motor Vehicles a full report of such collision, accident, or other casualty in such form and detail as the director by regulation may prescribe.

**Source:** Laws 1971, LB 330, § 23; Laws 1977, LB 230, § 18; R.S.1943, (1988), § 60-2023; Laws 1993, LB 370, § 442.

(ee) SPECIAL RULES FOR MINIBIKES AND  
OTHER OFF-ROAD VEHICLES

**60-6,347 Minibikes; exemptions from certain requirements.**

Minibikes, their owners, and their operators shall be exempt from the requirements of the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 1972, LB 1196, § 5; Laws 1981, LB 285, § 8; Laws 1986, LB 731, § 3; Laws 1989, LB 285, § 132; R.S.Supp.,1992, § 60-2101.01; Laws 1993, LB 370, § 443; Laws 2004, LB 812, § 1; Laws 2005, LB 274, § 249.

**Cross References**

**Motor Vehicle Operator's License Act**, see section 60-462.

**Motor Vehicle Registration Act**, see section 60-301.

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-6,348 Minibikes and off-road designed vehicles; use; emergencies; parades.**



Minibikes and all off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, go-carts, riding lawnmowers, garden tractors, and snowmobiles, shall be exempt from the provisions of sections 60-678, 60-6,351 to 60-6,353, 60-6,380, and 60-6,381 during any public emergency or while being used in parades by regularly organized units of any recognized charitable, social, educational, or community service organization.

**Source:** Laws 1971, LB 644, § 7; Laws 1972, LB 1196, § 6; Laws 1987, LB 80, § 12; R.S.1943, (1988), § 60-2102; Laws 1993, LB 370, § 444; Laws 2011, LB289, § 33; Laws 2012, LB1155, § 21.

**60-6,349 Minibikes and similar vehicles; sale; notice.**

All minibikes and similar two-wheeled, three-wheeled, and four-wheeled miniature vehicles offered for sale in this state shall bear the following notice to the customer and user: This vehicle as manufactured or sold is for off-road use only. This section shall not apply to a golf car vehicle or a low-speed vehicle, as applicable to its design, or to an electric personal assistive mobility device.

**Source:** Laws 1971, LB 644, § 8; Laws 1972, LB 1196, § 7; R.S.1943, (1988), § 60-2103; Laws 1993, LB 370, § 445; Laws 2002, LB 1105, § 464; Laws 2011, LB289, § 34; Laws 2012, LB1155, § 22.

**60-6,350 Moving across streets or a turnaround; authorized.**

Nothing in sections 60-678 and 60-6,348 to 60-6,351 shall prohibit occasional necessary movement of vehicles described in section 60-6,349 on streets for purposes of moving the vehicle across streets or a turnaround on the streets. All such vehicles when used under this section shall be exempt from all motor vehicle legal requirements.

**Source:** Laws 1971, LB 644, § 9; Laws 1989, LB 285, § 133; R.S.Supp.,1992, § 60-2104; Laws 1993, LB 370, § 446.

**60-6,351 Legislative intent.**

It is the intent of the Legislature to remove from street use and operation minibikes and similar two-wheeled, three-wheeled, or four-wheeled miniature vehicles, the visibility, power, and equipment of which are inadequate for mixing with normal vehicular traffic upon streets and highways. This section shall not apply to an electric personal assistive mobility device.

**Source:** Laws 1971, LB 644, § 10; Laws 1972, LB 1196, § 9; Laws 1989, LB 285, § 134; R.S.Supp.,1992, § 60-2105; Laws 1993, LB 370, § 447; Laws 2002, LB 1105, § 465.

**60-6,352 Violations; penalty.**

It shall be unlawful for any person to operate a minibike on any state highway except as permitted pursuant to section 60-6,353. Any person who violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1972, LB 1196, § 8; Laws 1977, LB 39, § 103; R.S.1943, (1988), § 60-2107; Laws 1993, LB 370, § 448.

**60-6,353 Operation; rules and regulations; violations; penalty.**

Any department, board, or commission of the State of Nebraska with jurisdiction over state parks and state recreation areas as defined in section 37-338 and

state wayside areas as described in section 81-711, in which motor vehicles of any type are permitted, may adopt and promulgate rules and regulations permitting and controlling the operation of minibikes and designating the place, time, and manner of such operation in the public recreation area under its control. In designating the manner of such operation within a specific location and during a specific time, the department, board, or commission may establish speed limits and restrictions on the age of the operator, noise emission levels, and number of minibikes permitted to be operated within a specific area at the same time. The other provisions of the Nebraska Rules of the Road not inconsistent with sections 60-678 and 60-6,347 to 60-6,353 shall apply to the public area.

Such department, board, or commission may further authorize the supervising official of any area under its ownership or control to prohibit operation of any minibike in emergency situations by personal or posted notice.

Any person operating a minibike in a place, at a time, or in a manner not permitted by the department, board, or commission having control over the area shall be guilty of a Class III misdemeanor.

Any political subdivision of the State of Nebraska with jurisdiction over highways may adopt and promulgate rules, regulations, ordinances, or resolutions in conformity with such sections.

**Source:** Laws 1972, LB 1196, § 10; Laws 1977, LB 39, § 104; Laws 1989, LB 285, § 135; R.S.Supp., 1992, § 60-2108; Laws 1993, LB 370, § 449; Laws 1998, LB 922, § 406.

**60-6,354 Coaster, roller skates, sled, skis, or toy vehicle; prohibited acts.**

Any person who rides upon any coaster, roller skates, sled, skis, or toy vehicle shall not attach such or himself or herself to any vehicle upon a roadway.

**Source:** Laws 1993, LB 370, § 450.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

**60-6,355 All-terrain vehicle, defined; utility-type vehicle, defined.**

(1) For purposes of sections 60-6,355 to 60-6,362:

(a) All-terrain vehicle means any motorized off-highway vehicle which (i) is fifty inches or less in width, (ii) has a dry weight of twelve hundred pounds or less, (iii) travels on three or more nonhighway tires, and (iv) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.

(b)(i) Utility-type vehicle means any motorized off-highway vehicle which (A) is seventy-four inches in width or less, (B) is not more than one hundred eighty inches, including the bumper, in length, (C) has a dry weight of two thousand pounds or less, (D) travels on four or more nonhighway tires.

(ii) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

(2) All-terrain vehicles and utility-type vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor

Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

**Source:** Laws 1987, LB 80, § 1; R.S.1943, (1988), § 60-2801; Laws 1993, LB 370, § 451; Laws 2003, LB 333, § 33; Laws 2005, LB 274, § 250; Laws 2010, LB650, § 39; Laws 2012, LB1155, § 24; Laws 2013, LB223, § 3; Laws 2014, LB814, § 7.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**60-6,356 All-terrain vehicle; utility-type vehicle; operation; restrictions; city or village ordinance; county board resolution.**

(1) An all-terrain vehicle or a utility-type vehicle shall not be operated on any controlled-access highway with more than two marked traffic lanes. The crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted except as provided in subsections (9) and (10) of this section. Subsections (2), (3), and (5) through (8) of this section authorize and apply to operation of an all-terrain vehicle or a utility-type vehicle only on a highway other than a controlled-access highway with more than two marked traffic lanes.

(2) An all-terrain vehicle or a utility-type vehicle may be operated in accordance with the operating requirements of subsection (3) of this section:

(a) Outside the corporate limits of a city, village, or unincorporated village if incidental to the vehicle's use for agricultural purposes;

(b) Within the corporate limits of a city or village if authorized by the city or village by ordinance adopted in accordance with this section; or

(c) Within an unincorporated village if authorized by the county board of the county in which the unincorporated village is located by resolution in accordance with this section.

(3) An all-terrain vehicle or a utility-type vehicle may be operated as authorized in subsection (2) of this section when such operation occurs only between the hours of sunrise and sunset. Any person operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section shall have a valid Class O operator's license or a farm permit as provided in section 60-4,126, shall have liability insurance coverage for the all-terrain vehicle or a utility-type vehicle while operating the all-terrain vehicle or a utility-type vehicle on a highway, and shall not operate such vehicle at a speed in excess of thirty miles per hour. The person operating the all-terrain vehicle or a utility-type vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such a request. When operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

(4) All-terrain vehicles and utility-type vehicles may be operated without complying with subsection (3) of this section on highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.

(5) The crossing of a highway other than a controlled-access highway with more than two marked traffic lanes shall be permitted by an all-terrain vehicle or a utility-type vehicle without complying with subsection (3) of this section only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) Both the headlight and taillight of the vehicle are on when the crossing is made.

(6) All-terrain vehicles and utility-type vehicles may be operated outside the corporate limits of any municipality by electric utility personnel within the course of their employment in accordance with the operation requirements of subsection (3) of this section, except that the operation of the vehicle pursuant to this subsection need not be limited to the hours between sunrise and sunset.

(7) A city or village may adopt an ordinance authorizing the operation of all-terrain vehicles and utility-type vehicles within the corporate limits of the city or village if the operation is in accordance with subsection (3) of this section. The city or village may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within its corporate limits.

(8) A county board may adopt a resolution authorizing the operation of all-terrain vehicles and utility-type vehicles within any unincorporated village within the county if the operation is in accordance with subsection (3) of this section. The county may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within the unincorporated village.

(9) Except as provided in subsection (10) of this section, the crossing of a controlled-access highway with more than two marked traffic lanes shall be permitted by a utility-type vehicle if the operation is in accordance with the operation requirements of subsection (3) of this section and if the following requirements are met:

(a) The crossing is made at an intersection that:

(i) Is controlled by a traffic control signal; or

(ii) For any intersection located outside the corporate limits of a city or village, is controlled by stop signs;

(b) The crossing at such intersection is made in compliance with the traffic control signal or stop signs; and

(c) The crossing at such intersection is specifically authorized as follows:

(i) If such intersection is located within the corporate limits of a city or village, by ordinance of such city or village;

(ii) If such intersection is located within an unincorporated village, by resolution of the county board of the county in which such unincorporated village is located; or

(iii) If such intersection is located outside the corporate limits of a city or village and outside any unincorporated village, by resolution of the county board of the county in which such intersection is located.

(10) When the use of the all-terrain vehicle or utility-type vehicle is for an agricultural purpose, the crossing of a controlled-access highway with more than two marked traffic lanes shall be permitted if such vehicle is operated in accordance with subsection (3) of this section.

**Source:** Laws 1987, LB 80, § 2; Laws 1989, LB 114, § 1; Laws 1989, LB 285, § 138; R.S.Supp.,1992, § 60-2802; Laws 1993, LB 370, § 452; Laws 2007, LB307, § 1; Laws 2010, LB650, § 40; Laws 2015, LB122, § 1; Laws 2020, LB944, § 72.

**60-6,357 All-terrain vehicle; utility-type vehicle; lights required; when.**

Every all-terrain vehicle and utility-type vehicle shall display a lighted headlight and taillight during the period of time from sunset to sunrise and at any time when visibility is reduced due to insufficient light or unfavorable atmospheric conditions.

**Source:** Laws 1987, LB 80, § 3; R.S.1943, (1988), § 60-2803; Laws 1993, LB 370, § 453; Laws 1993, LB 575, § 50; Laws 2010, LB650, § 41.

**60-6,358 All-terrain vehicle; utility-type vehicle; equipment required.**

Every all-terrain vehicle and utility-type vehicle shall be equipped with:

- (1) A brake system maintained in good operating condition;
- (2) An adequate muffler system in good working condition; and
- (3) A United States Forest Service qualified spark arrester.

**Source:** Laws 1987, LB 80, § 4; R.S.1943, (1988), § 60-2804; Laws 1993, LB 370, § 454; Laws 2010, LB650, § 42.

**60-6,359 Modification of all-terrain vehicle or utility-type vehicle; prohibited.**

No person shall:

- (1) Equip the exhaust system of an all-terrain vehicle or a utility-type vehicle with a cutout, bypass, or similar device;
- (2) Operate an all-terrain vehicle or a utility-type vehicle with an exhaust system so modified; or
- (3) Operate an all-terrain vehicle or a utility-type vehicle with the spark arrester removed or modified except for use in closed-course competition events.

**Source:** Laws 1987, LB 80, § 5; R.S.1943, (1988), § 60-2805; Laws 1993, LB 370, § 455; Laws 2010, LB650, § 43.

**60-6,360 All-terrain vehicle; utility-type vehicle; competitive events; exemptions.**

All-terrain vehicles and utility-type vehicles participating in competitive events may be exempted from sections 60-6,357 to 60-6,359 at the discretion of the Director of Motor Vehicles.

**Source:** Laws 1987, LB 80, § 6; R.S.1943, (1988), § 60-2806; Laws 1993, LB 370, § 456; Laws 2010, LB650, § 44.

**60-6,361 All-terrain vehicle; utility-type vehicle; accident; report required.**

If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle or utility-type vehicle involved in the accident shall give notice of the accident in the same manner as provided in section 60-699.

**Source:** Laws 1987, LB 80, § 7; R.S.1943, (1988), § 60-2807; Laws 1993, LB 370, § 457; Laws 1993, LB 575, § 51; Laws 2010, LB650, § 45.

**60-6,362 Violations; penalty.**

(1) Any person who violates sections 60-6,356 to 60-6,361 shall be guilty of a Class III misdemeanor, except that if such person is convicted of a second or subsequent offense within any period of one year, he or she shall be guilty of a Class II misdemeanor.

(2) Any violation of such sections which is also a violation under any other provision of Chapter 60 may be punished under the penalty provisions of such chapter.

**Source:** Laws 1987, LB 80, § 8; R.S.1943, (1988), § 60-2808; Laws 1993, LB 370, § 458.

(gg) SMOKE EMISSIONS AND NOISE

**60-6,363 Terms, defined.**

For purposes of sections 60-6,363 to 60-6,374:

(1) Diesel-powered motor vehicle shall mean a self-propelled vehicle which is designed primarily for transporting persons or property on a highway and which is powered by an internal combustion engine of the compression ignition type;

(2) Motor vehicle shall mean a self-propelled vehicle with a gross unloaded vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration which is towed by such a vehicle;

(3) Smoke shall mean the solid or liquid matter, except water, discharged from a motor vehicle engine which obscures the transmission of light;

(4) Smokemeter shall mean a full-flow, light-extinction smokemeter of a type approved by the Department of Environment and Energy and operating on the principles described in the federal standards;

(5) Opacity shall mean the degree to which a smoke plume emitted from a diesel-powered motor vehicle engine will block the passage of a beam of light expressed as a percentage; and

(6) Smoke control system shall mean a system consisting of one or more devices and adjustments designed to control the discharge of smoke from diesel-powered motor vehicles.

**Source:** Laws 1972, LB 1360, § 1; Laws 1976, LB 823, § 3; R.S.1943, (1988), § 60-2201; Laws 1993, LB 370, § 459; Laws 1993, LB 3, § 35; Laws 2019, LB302, § 65.

**60-6,364 Applicability of sections.**

Sections 60-6,363 to 60-6,374 shall apply to all diesel-powered motor vehicles operated within this state with the exception of the following:

- (1) Emergency vehicles operated by federal, state, and local governmental authorities;
- (2) Vehicles which are not required to be registered in accordance with the Motor Vehicle Registration Act;
- (3) Vehicles used for research and development which have been approved by the Director of Environment and Energy;
- (4) Vehicles being operated while undergoing maintenance;
- (5) Vehicles operated under emergency conditions;
- (6) Vehicles being operated in the course of training programs which have been approved by the director; and
- (7) Other vehicles expressly exempted by the director.

**Source:** Laws 1972, LB 1360, § 2; R.S.1943, (1988), § 60-2202; Laws 1993, LB 370, § 460; Laws 2005, LB 274, § 251; Laws 2019, LB302, § 66.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**60-6,365 Diesel-powered motor vehicle; smoke; shade, density, or opacity.**

No one shall operate a diesel-powered motor vehicle on any highway in this state in such a manner that smoke discharged from the exhaust is of a shade or density equal to or darker than that designated as Number 1 of the Ringelmann Chart or equivalent opacity of twenty percent for ten consecutive seconds or longer.

**Source:** Laws 1972, LB 1360, § 3; Laws 1976, LB 823, § 4; R.S.1943, (1988), § 60-2203; Laws 1993, LB 370, § 461.

**60-6,366 Smoke control system; removal or change; prohibited; exception.**

No one shall intentionally make a change or other alteration to any diesel-powered motor vehicle equipped by its manufacturer with a smoke control system, including the basic fuel system, that may limit the ability of the system to control smoke, and no one shall remove such a smoke control system except for repair or installation of a proper replacement.

**Source:** Laws 1972, LB 1360, § 4; Laws 1976, LB 823, § 5; R.S.1943, (1988), § 60-2204; Laws 1993, LB 370, § 462.

**60-6,367 Enforcement of sections; citations; use of smokemeter; results; admissible as evidence.**

(1) Officials of the Department of Environment and Energy and local enforcement officials shall have the authority to issue citations to suspected violators of sections 60-6,363 to 60-6,374 on the basis of their visual evaluation of the smoke emitted from a diesel-powered motor vehicle. A citation shall give the suspected violator a reasonable time to furnish evidence to the department that such alleged violation has been corrected or else such suspected violator shall be subject to the penalties set out in section 60-6,373. A suspected violator may demand that the suspected vehicle be tested by an approved smokemeter prior to a trial on the alleged violation.

(2) Smokemeter tests shall be conducted (a) by or under the supervision of a person or testing facility authorized by the Director of Environment and Energy to conduct such tests and (b) by installing an approved smokemeter on the exhaust pipe and operating the suspected vehicle at engine revolutions per minute equivalent to the engine revolutions per minute at the time of the alleged violation.

(3) The results of smokemeter tests run in accordance with this section and after the alleged violation shall be admissible as evidence in legal proceedings.

**Source:** Laws 1972, LB 1360, § 5; Laws 1976, LB 823, § 6; R.S.1943, (1988), § 60-2205; Laws 1993, LB 370, § 463; Laws 1993, LB 3, § 36; Laws 2019, LB302, § 67.

**60-6,368 Director of Environment and Energy; powers; rules and regulations; control of noise or emissions.**

(1) The Director of Environment and Energy shall have the power, after public hearings on due notice, to adopt and promulgate, consistent with and in furtherance of the provisions of sections 60-6,363 to 60-6,374, rules and regulations in accordance with which he or she will carry out his or her responsibilities and obligations under such sections.

(2) Any rules or regulations promulgated by the director shall be consistent with the provisions of the federal standards, if any, relating to control of emissions from the diesel-powered motor vehicles affected by such rules and regulations. The director shall not require, as a condition for the sale of any diesel-powered motor vehicle covered by sections 60-6,363 to 60-6,374, the inspection, certification, or other approval of any feature or equipment designed for the control of noise or emissions from such diesel-powered motor vehicles if such feature or equipment has been certified, approved, or otherwise authorized pursuant to laws or regulations of any federal governmental body as sufficient to make lawful the sale of any diesel-powered motor vehicle covered by such sections.

**Source:** Laws 1972, LB 1360, § 6; Laws 1976, LB 823, § 7; R.S.1943, (1988), § 60-2206; Laws 1993, LB 370, § 464; Laws 2019, LB302, § 68.

**60-6,369 Noise; restrictions.**

No person shall sell, or offer for sale, a new motor vehicle with a gross vehicle weight of ten thousand pounds or more that produces a maximum noise



exceeding a noise limit of 80dB(A) at a distance of fifty feet from the centerline of travel under test procedures established by section 60-6,372.

**Source:** Laws 1972, LB 1360, § 7; Laws 1979, LB 140, § 1; R.S.1943, (1988), § 60-2207; Laws 1993, LB 370, § 465.

**60-6,370 Operation; noise; limitation.**

No person shall operate within the speed limits specified in this section either a motor vehicle with a gross vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration, towed by such motor vehicle, at any time or under any condition of grade, load, acceleration, or deceleration in such manner as to exceed the following noise limit based on a distance of not less than fifty feet from the centerline of travel under test procedures established by section 60-6,372: When the posted speed limit is thirty-five miles per hour or less, the noise limit shall not exceed 86dB(A), and when the posted speed limit is more than thirty-five miles per hour, the noise limit shall not exceed 90dB(A). This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of sections 60-6,363 to 60-6,374 relating to motor vehicle mufflers for noise control.

**Source:** Laws 1972, LB 1360, § 8; Laws 1976, LB 823, § 8; R.S.1943, (1988), § 60-2208; Laws 1993, LB 370, § 466.

**60-6,371 Exhaust or intake muffler; change; increase of noise; prohibited.**

No person shall modify or change the exhaust muffler, the intake muffler, or any other noise-abatement device of a motor vehicle in a manner such that the noise emitted by the motor vehicle is increased above that emitted by the vehicle as originally manufactured. Procedures used to establish compliance with this section shall be those used to establish compliance of a new motor vehicle with the requirements of sections 60-6,363 to 60-6,374.

**Source:** Laws 1972, LB 1360, § 9; R.S.1943, (1988), § 60-2209; Laws 1993, LB 370, § 467.

**60-6,372 Noise measurement tests; manner conducted; conditions; enumerated.**

(1) Noise measurements shall be made at a test site which is adjacent to and includes a portion of a roadway. A microphone target point shall be established on the centerline of the roadway, and a microphone location point shall be established on the ground surface at a distance of fifty feet from the microphone target point and on a line that is perpendicular to the centerline of the roadway and that passes through the microphone target point. The microphone shall be placed such that it is at a height of not less than two feet and not more than six feet above the plane of the roadway surface. The test area shall include an open site within a fifty-foot radius of both the microphone target point and the microphone location point. The test site shall be essentially free of large sound-reflecting objects.

(2) Noise measurement conditions shall be as follows:

(a) Noise measurements may only be made if the measured average wind velocity is twelve miles per hour or less. Gust wind measurements of up to twenty miles per hour shall be allowed;

(b) Measurements shall be prohibited under any condition of precipitation, but measurements may be made with snow on the ground. The ground surface within the measurement area shall be free of standing water; and

(c) Road conditions shall be such that they would not cause a motor vehicle to emit irregular tire, body, or chassis-impact noise.

(3) In accordance with this section, a measurement shall be made of the sound level generated by a motor vehicle operating through the measurement area on the traveled portion of the highway within the test site, regardless of the highway grade, load, acceleration, or deceleration. The sound level generated by the motor vehicle shall be the highest reading observed on the sound level measurement system as the vehicle passes through the measurement area.

**Source:** Laws 1972, LB 1360, § 10; Laws 1976, LB 823, § 9; R.S.1943, (1988), § 60-2210; Laws 1993, LB 370, § 468.

**60-6,373 Standards; violations; penalty.**

Every person who operates a diesel-powered or other motor vehicle in this state in violation of the standards established by sections 60-6,363 to 60-6,374 shall be guilty of a Class V misdemeanor, and every day that the diesel-powered or other motor vehicle is so operated shall be deemed to be a separate offense.

**Source:** Laws 1972, LB 1360, § 11; Laws 1977, LB 39, § 105; R.S.1943, (1988), § 60-2211; Laws 1993, LB 370, § 469.

**60-6,374 Sections; exclusive treatment.**

The provisions of sections 60-6,363 to 60-6,374 shall be exclusive and prevail over other provisions of law in this state or any of its subdivisions applied to smoke from diesel-powered motor vehicles.

**Source:** Laws 1972, LB 1360, § 12; R.S.1943, (1988), § 60-2212; Laws 1993, LB 370, § 470.

(hh) SPECIAL RULES FOR ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

**60-6,375 Electric personal assistive mobility device; exemptions from certain requirements.**

An electric personal assistive mobility device, its owner, and its operator shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 2002, LB 1105, § 459; Laws 2005, LB 274, § 252; Laws 2005, LB 276, § 105.

**Cross References**

**Motor Vehicle Certificate of Title Act**, see section 60-101.  
**Motor Vehicle Operator's License Act**, see section 60-462.  
**Motor Vehicle Registration Act**, see section 60-301.  
**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-6,376 Electric personal assistive mobility device; operation; violation; penalty.**

(1) Any person who operates an electric personal assistive mobility device on a highway shall have all of the rights and shall be subject to all of the duties applicable to the operator of a vehicle under the Nebraska Rules of the Road except (a) as provided in special electric personal assistive mobility device regulations adopted pursuant to the Nebraska Rules of the Road, (b) any provisions of the Nebraska Rules of the Road which by their nature can have no application, and (c) as provided in section 60-6,142 with respect to operating an electric personal assistive mobility device on a shoulder of a highway.

(2) An electric personal assistive mobility device may be operated on any highway, alley, sidewalk, bike trail, path, or any other area where persons travel, except as provided by the Department of Transportation or local authority. Regulations applicable to an electric personal assistive mobility device shall apply whenever an electric personal assistive mobility device is so operated.

(3) An operator of an electric personal assistive mobility device shall yield to pedestrian traffic and any human-powered or animal-powered vehicle at all times. An operator of an electric personal assistive mobility device shall give an audible signal before overtaking and passing any pedestrian or human-powered or animal-powered vehicle. A person violating this subsection shall be fined ten dollars for the first offense. A person violating this subsection shall have his or her electric personal assistive mobility device impounded for up to thirty days for each subsequent offense.

**Source:** Laws 2002, LB 1105, § 460; Laws 2017, LB339, § 230.

**60-6,377 Electric personal assistive mobility device; operation at nighttime.**

When in use at nighttime, an electric personal assistive mobility device or the operator of an electric personal assistive device shall be equipped with a light visible from a distance of at least five hundred feet to the front on a clear night and with a red reflector on the rear of a type which is visible on a clear night from all distances between one hundred feet and six hundred feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. A red light visible from a distance of five hundred feet to the rear may be used in addition to such red reflector.

**Source:** Laws 2002, LB 1105, § 461.

(ii) EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE

**60-6,378 Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.**

(1)(a) A driver in a vehicle on a controlled-access highway approaching or passing a stopped authorized emergency vehicle or road assistance vehicle which makes use of proper audible or visual signals shall proceed with due care and caution as described in subdivision (b) of this subsection.

(b) On a controlled-access highway with at least two adjacent lanes of travel in the same direction on the same side of the highway where a stopped authorized emergency vehicle or road assistance vehicle is using proper audible or visual signals, the driver of the vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the stopped authorized emergency vehicle or road assistance vehicle unless directed otherwise by a peace officer or other authorized emer-

gency personnel. If moving into another lane is not possible because of weather conditions, road conditions, or the immediate presence of vehicular or pedestrian traffic or because the controlled-access highway does not have two available adjacent lanes of travel in the same direction on the same side of the highway where such a stopped authorized emergency vehicle or road assistance vehicle is located, the driver of the approaching or passing vehicle shall reduce his or her speed, maintain a safe speed with regard to the location of the stopped authorized emergency vehicle or road assistance vehicle, the weather conditions, the road conditions, and vehicular or pedestrian traffic, and proceed with due care and caution or proceed as directed by a peace officer or other authorized emergency personnel or road assistance personnel.

(c) Any person who violates this subsection is guilty of a traffic infraction for a first offense and Class IIIA misdemeanor for a second or subsequent offense.

(2) The Department of Transportation shall erect and maintain or cause to be erected and maintained signs giving notice of subsection (1) of this section along controlled-access highways.

(3) Enforcement of subsection (1) of this section shall not be accomplished using simulated situations involving an authorized emergency vehicle or a road assistance vehicle.

(4) This section does not relieve the driver of an authorized emergency vehicle or a road assistance vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(5) For purposes of this section, road assistance vehicle includes a vehicle operated by the Nebraska Department of Transportation, a Nebraska State Patrol motorist assistance vehicle, a United States Department of Transportation registered towing or roadside assistance vehicle, and a utility service vehicle operated by a utility company. A road assistance vehicle shall emit a warning signal utilizing properly displayed emergency indicators such as strobe, rotating, or oscillating lights when stopped along a highway.

**Source:** Laws 2009, LB92, § 2; Laws 2013, LB154, § 1; Laws 2017, LB339, § 231.

**60-6,378.01 Duties of drivers approaching stopped vehicle or towing, maintenance, solid waste collection, or other vehicles.**

A driver in a vehicle on any roadway other than a controlled-access highway who is approaching (1) a stopped authorized emergency vehicle using flashing or rotating lights as provided in section 60-6,231 or (2) a vehicle operated by a towing or vehicle recovery service, a Nebraska State Patrol motorist assistance vehicle, a publicly or privately owned utility maintenance vehicle, a highway maintenance vehicle, or a vehicle operated by a solid waste or recycling collection service, which is stopped and displaying strobe or flashing red, yellow, or amber lights, shall, unless otherwise directed by a law enforcement officer, proceed with due care and caution and:

(a) Reduce speed to a reasonable speed below the posted speed limit, move into another lane that is at least one moving lane apart from the stopped vehicle if possible under existing traffic and safety conditions, and be prepared to stop; or

(b) If such a lane change is impossible, unsafe, or prohibited by law, reduce speed to a reasonable speed below the posted speed limit and be prepared to stop.

**Source:** Laws 2018, LB909, § 98.

(jj) SPECIAL RULES FOR MINITRUCKS

**60-6,379 Minitrucks; former military vehicles; restrictions on use.**

(1) A minitruck or a former military vehicle shall not be operated on the National System of Interstate and Defense Highways, on expressways, or on freeways.

(2) A minitruck or a former military vehicle shall be operated with its headlights and taillights on.

**Source:** Laws 2010, LB650, § 38; Laws 2019, LB156, § 19.

(kk) SPECIAL RULES FOR LOW-SPEED VEHICLES

**60-6,380 Low-speed vehicle; restrictions on use.**

A low-speed vehicle may be operated on any highway on which the speed limit is not more than thirty-five miles per hour. A low-speed vehicle may cross a highway on which the speed limit is more than thirty-five miles per hour. Nothing in this section shall prevent a county, city, or village from adopting more stringent ordinances governing low-speed vehicle operation if the governing body of the county, city, or village determines that such ordinances are necessary in the interest of public safety. Any person operating a low-speed vehicle as authorized under this section shall have a valid Class O operator's license and shall have liability insurance coverage for the low-speed vehicle. The Department of Transportation may prohibit the operation of low-speed vehicles on any highway under its jurisdiction if it determines that the prohibition is necessary in the interest of public safety.

**Source:** Laws 2011, LB289, § 32; Laws 2017, LB339, § 232.

(ll) SPECIAL RULES FOR GOLF CAR VEHICLES

**60-6,381 Golf car vehicles; city, village, or county; operation authorized; restrictions; liability insurance.**

(1)(a) A city or village may adopt an ordinance authorizing the operation of golf car vehicles within the corporate limits of the city or village if the operation is on streets adjacent and contiguous to a golf course.

(b) A county board may adopt an ordinance pursuant to section 23-187 authorizing the operation of golf car vehicles within the county if the operation is on roads adjacent and contiguous to a golf course.

(c) Any person operating a golf car vehicle as authorized under this subsection shall have a valid Class O operator's license, and the owner of the golf car vehicle shall have liability insurance coverage for the golf car vehicle. The person operating the golf car vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days after such a request.

(d) The restrictions of subsection (2) of this section do not apply to ordinances adopted under this subsection.

(2)(a) A city or village may adopt an ordinance authorizing the operation of golf car vehicles on streets within the corporate limits of the city or village if the operation is (i) between sunrise and sunset and (ii) on streets with a posted speed limit of thirty-five miles per hour or less. When operating a golf car vehicle as authorized under this subsection, the operator shall not operate such vehicle at a speed in excess of twenty miles per hour. A golf car vehicle shall not be operated at any time on any state or federal highway but may be operated upon such a highway in order to cross a portion of the highway system which intersects a street as directed in subsection (3) of this section. A city or village may, as part of such ordinance, implement standards for operation of golf car vehicles that are more stringent than the restrictions of this subsection for the safety of the operator and the public.

(b) A county board may adopt an ordinance pursuant to section 23-187 authorizing the operation of golf car vehicles on roads within the county if the operation is (i) between sunrise and sunset and (ii) on roads with a posted speed limit of thirty-five miles per hour or less. When operating a golf car vehicle as authorized under this subsection, the operator shall not operate such vehicle at a speed in excess of twenty miles per hour. A golf car vehicle shall not be operated at any time on any state or federal highway but may be operated upon such highway in order to cross a portion of the highway system which intersects a road as directed in subsection (3) of this section. A county may, as part of such ordinance, implement standards for operation of golf car vehicles that are more stringent than the restrictions of this subsection for the safety of the operator and the public.

(c) Any person operating a golf car vehicle as authorized under this subsection shall have a valid Class O operator's license, and the owner of the golf car vehicle shall have liability insurance coverage for the golf car vehicle. The person operating the golf car vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days after such a request. The liability insurance coverage shall be subject to limits, exclusive of interest and costs, as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

(3) The crossing of a highway shall be permitted by a golf car vehicle only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The golf car vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with a street or road, as applicable.

(4) For purposes of this section:

(a) Road means a public way for the purposes of vehicular travel, including the entire area within the right-of-way; and

(b) Street means a public way for the purposes of vehicular travel in a city or village and includes the entire area within the right-of-way.

**Source:** Laws 2012, LB1155, § 23; Laws 2015, LB570, § 1.

(mm) FARM EQUIPMENT DEALERS

**60-6,382 Farm equipment dealers; farm equipment haulers act as representative; conditions; signed statement; contents.**

Farm equipment dealers may allow farm equipment haulers to act as their representative when hauling farm equipment to or from the dealer's place of business. Farm equipment haulers shall carry in the motor vehicle hauling the farm equipment a signed statement from the farm equipment dealer stating that they are acting as a representative of the farm equipment dealer. The statement shall be dated and valid for ninety days and shall be subject to inspection by any peace officer. The statement shall indicate the name of the farm equipment dealer, the name of the hauler, and that the dealer authorizes the hauler to act as its representative for purposes of complying with width, height, and length limitations. Nothing in this section shall require farm equipment dealers to provide insurance coverage for farm equipment haulers.

**Source:** Laws 2014, LB1039, § 2.

**60-6,383 Implement of husbandry; weight and load limitations; operation restrictions.**

(1) An implement of husbandry being operated on any highway of this state, except the National System of Interstate and Defense Highways, shall be exempt from the weight and load limitations of subsections (2), (3), and (4) of section 60-6,294 but shall be subject to any ordinances or resolutions enacted by local authorities pursuant to section 60-681.

(2) An implement of husbandry being operated on any highway of this state shall not cross any culvert with a span of more than sixty inches or any bridge if the vehicle axle, axle groupings, or gross weight exceeds the limits established in subsections (2), (3), and (4) of section 60-6,294 or weight limits established by bridge postings.

(3) For purposes of this section, an implement of husbandry includes (a) a farm tractor with or without a towed farm implement, (b) a self-propelled farm implement, (c) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil or crops, (d) an agricultural floater-spreader implement as defined in section 60-303, (e) a fertilizer spreader, nurse tank, or truck permanently mounted with a spreader used for spreading or injecting water, dust, or liquid fertilizers or agricultural chemicals, (f) a truck mounted with a spreader used or manufactured to spread or inject animal manure, and (g) a mixer-feed truck owned and used by a livestock-raising operation designed for and used for the feeding of livestock.

**Source:** Laws 2016, LB977, § 22; Laws 2018, LB310, § 3.

## ARTICLE 7

## 24/7 SOBRIETY PROGRAM ACT

## Section

- 60-701. Act, how cited.  
60-702. Legislative findings and declarations; 24/7 sobriety program; coordination.  
60-703. Terms, defined.  
60-704. 24/7 sobriety program; county participation; requirements; sanctions; fees and testing costs; accounting.  
60-705. 24/7 sobriety program permit; issuance; requirements; revocation; grounds; court order.  
60-706. 24/7 sobriety program permit; application; availability; revocation.

**60-701 Act, how cited.**

Sections 60-701 to 60-706 shall be known and may be cited as the 24/7 Sobriety Program Act.

**Source:** Laws 2021, LB271, § 1.  
Operative date July 1, 2022.

**60-702 Legislative findings and declarations; 24/7 sobriety program; coordination.**

(1) The Legislature finds and declares that there are many different approaches to assist individuals who struggle with substance abuse. Alternatives to incarceration should be considered in order to reduce the cost to the taxpayers, successfully rehabilitate offenders, ensure public safety, and minimize risk to society. Ignition interlock devices, which are required to be installed for those who are charged with or have been convicted of certain offenses, while effective, may be a financial burden to those who cannot afford the costs of installation or maintenance of such devices. In this state, ignition interlock devices have been proven to be an effective means of preventing drivers from operating motor vehicles while under the influence of alcohol. Other states have implemented 24/7 sobriety programs. States that implement 24/7 sobriety programs have seen success with such programs in that participants have higher rates of maintaining sobriety, have lower rates of recidivism, are more likely to become productive members of society, and are less likely to be a continued public risk. Therefore, it is in the best interests of the State of Nebraska to establish 24/7 sobriety programs.

(2) A 24/7 sobriety program shall coordinate efforts among various state and local governmental agencies for finding and implementing alternatives to incarceration for offenses that involve operating a motor vehicle under the influence of alcohol or other drugs.

**Source:** Laws 2021, LB271, § 2.  
Operative date July 1, 2022.

**60-703 Terms, defined.**

For purposes of the 24/7 Sobriety Program Act:

(1) 24/7 sobriety program means a program that, as a condition of bail as ordered by a court, requires an individual who was arrested to:

(a) Totally abstain from alcohol and drugs for a specified period of time;



- (b) Be subject to at least twice daily testing for alcohol according to best practice standards; and
- (c) Be subject to drug testing if indicated by best practices;
- (2) Department means the Department of Motor Vehicles;
- (3) Director means the Director of Motor Vehicles; and
- (4) Testing means a method to determine the presence of alcohol or drugs.

**Source:** Laws 2021, LB271, § 3.  
Operative date July 1, 2022.

**60-704 24/7 sobriety program; county participation; requirements; sanctions; fees and testing costs; accounting.**

- (1) Each county, through its county sheriff, may participate in a 24/7 sobriety program. If a sheriff is unwilling or unable to participate in a 24/7 sobriety program, the sheriff may designate an entity willing to provide the service.
- (2) A 24/7 sobriety program shall meet at least the following minimum program requirements:
  - (a) Testing shall occur twice a day every day at a testing location or locations established by the county sheriff or a designated entity or continuously with a continuous alcohol monitoring device or similar technology;
  - (b) Participants shall enter into a participation agreement with the sheriff or designated entity; and
  - (c) Participants shall not consume alcohol or any drug not prescribed by a physician.
- (3) If a test reveals a violation of the 24/7 sobriety program, sanctions imposed shall be immediate and certain and in accordance with best practices, as set forth in the participation agreement. A sixth sanction against a participant charged with an alcohol-related offense shall be removal from the 24/7 sobriety program and the participant shall be ineligible for further participation in the program for that case. Sanctions for new drug use may be more severe and shall be outlined in the participation agreement.
- (4) The sheriff or designated entity shall establish a reasonable fee to cover the setup and operation of a 24/7 sobriety program for all participants. Reasonable program and testing fees may be charged. Testing costs may vary by participant depending on the technology employed. Testing costs may be higher if the participant is involved in the program due to a nonalcohol, drug-related offense. All fees and costs charged pursuant to this subsection shall be set forth in the participation agreement. Such costs and fees may be waived by the court if the participant has made a showing to the court of an inability to pay.
- (5) Each sheriff or designated entity shall separately account for all fees and costs collected by a 24/7 sobriety program.
- (6) Nothing in the 24/7 Sobriety Program Act shall be construed to limit the ability of a court to utilize any form of technology to (a) detect the use or presence of alcohol or drugs or (b) comply with other forms of supervision deemed appropriate by the court.

**Source:** Laws 2021, LB271, § 4.  
Operative date July 1, 2022.

**60-705 24/7 sobriety program permit; issuance; requirements; revocation; grounds; court order.**

(1) If an individual has been arrested for a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with such sections and is participating in a 24/7 sobriety program, such individual may petition the court for an order allowing the individual to apply for a 24/7 sobriety program permit as set forth in section 60-706. A 24/7 sobriety program permit shall only be issued if the individual's operator's license has been revoked pursuant to section 60-498.01 for the pending offense.

(2) The court shall only issue an order under subsection (1) of this section if the court has sufficient proof the individual is enrolled in a 24/7 sobriety program and has gone at least thirty consecutive days without any sanctions being imposed.

(3) If, after the issuance of an order allowing an individual to apply for a 24/7 sobriety program permit, the individual withdraws or is terminated from the 24/7 sobriety program, the court shall immediately issue an order revoking the 24/7 sobriety program permit and cause a copy of the order to be sent to the director.

(4) The holder of a commercial driver's license under the Motor Vehicle Operator's License Act is not eligible for a 24/7 sobriety program permit.

(5) A person shall be eligible to be issued a 24/7 sobriety program permit allowing operation of a motor vehicle if he or she is not subject to any other suspension, cancellation, required no-driving period, or period of revocation and has successfully completed the application for a 24/7 sobriety program permit.

**Source:** Laws 2021, LB271, § 5.  
Operative date July 1, 2022.

**Cross References**

**Motor Vehicle Operator's License Act**, see section 60-462.

**60-706 24/7 sobriety program permit; application; availability; revocation.**

(1) Upon receipt by the director of (a) a certified copy of a court order issued under subsection (1) of section 60-705, (b) sufficient evidence that the individual has surrendered the individual's operator's license to the department, and (c) payment of the fee provided in section 60-4,115, such individual may apply for a 24/7 sobriety program permit. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of a commercial motor vehicle.

(2) A 24/7 sobriety program permit shall only be available to a holder of a Class M or O operator's license.

(3) The director shall revoke a 24/7 sobriety program permit issued under this section upon receipt of an (a) abstract of conviction indicating that the individual's operating privileges have been revoked or (b) order from a court revoking the individual's 24/7 sobriety program permit.

**Source:** Laws 2021, LB271, § 6.  
Operative date July 1, 2022.

**ARTICLE 8  
MOTOR CARRIERS OF LIVESTOCK**

Section

- 60-801. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-802. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-803. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-804. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-805. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-806. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-807. Repealed. Laws 1961, c. 284, § 1.

**60-801 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-802 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-803 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-804 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-805 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-806 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-807 Repealed. Laws 1961, c. 284, § 1.**

**ARTICLE 9  
TOWING MOTOR VEHICLES ON HIGHWAYS**

Section

- 60-901. Repealed. Laws 1965, c. 374, § 2.
- 60-902. Repealed. Laws 1965, c. 374, § 2.
- 60-903. Repealed. Laws 1965, c. 374, § 2.
- 60-904. Repealed. Laws 1965, c. 374, § 2.
- 60-905. Repealed. Laws 1965, c. 374, § 2.
- 60-906. Repealed. Laws 1965, c. 374, § 2.
- 60-907. Repealed. Laws 1965, c. 374, § 2.

**60-901 Repealed. Laws 1965, c. 374, § 2.**

**60-902 Repealed. Laws 1965, c. 374, § 2.**

**60-903 Repealed. Laws 1965, c. 374, § 2.**

**60-904 Repealed. Laws 1965, c. 374, § 2.**

**60-905 Repealed. Laws 1965, c. 374, § 2.**

**60-906 Repealed. Laws 1965, c. 374, § 2.**

**60-907 Repealed. Laws 1965, c. 374, § 2.**

**ARTICLE 10  
STATE-OWNED MOTOR VEHICLES**

Section

- 60-1001. Transferred to section 81-1021.
- 60-1001.01. Transferred to section 81-1022.

**§ 60-1001**

**MOTOR VEHICLES**

Section  
60-1002. Repealed. Laws 1969, c. 770, § 11.  
60-1003. Repealed. Laws 1983, LB 118, § 5.  
60-1004. Transferred to section 81-1023.  
60-1005. Transferred to section 81-1024.  
60-1006. Transferred to section 81-1025.  
60-1007. Repealed. Laws 1969, c. 756, § 36.  
60-1008. Transferred to section 81-8,239.07.  
60-1009. Repealed. Laws 1981, LB 273, § 33.

**60-1001 Transferred to section 81-1021.**

**60-1001.01 Transferred to section 81-1022.**

**60-1002 Repealed. Laws 1969, c. 770, § 11.**

**60-1003 Repealed. Laws 1983, LB 118, § 5.**

**60-1004 Transferred to section 81-1023.**

**60-1005 Transferred to section 81-1024.**

**60-1006 Transferred to section 81-1025.**

**60-1007 Repealed. Laws 1969, c. 756, § 36.**

**60-1008 Transferred to section 81-8,239.07.**

**60-1009 Repealed. Laws 1981, LB 273, § 33.**

**ARTICLE 11**

**TAXICABS**

Section  
60-1101. Repealed. Laws 1967, c. 393, § 1.  
60-1102. Repealed. Laws 1967, c. 393, § 1.  
60-1103. Repealed. Laws 1967, c. 393, § 1.

**60-1101 Repealed. Laws 1967, c. 393, § 1.**

**60-1102 Repealed. Laws 1967, c. 393, § 1.**

**60-1103 Repealed. Laws 1967, c. 393, § 1.**

**ARTICLE 12**

**MOTOR CARRIERS; DRIVERS; HOURS OF LABOR**

Section  
60-1201. Transferred to section 75-381.  
60-1202. Transferred to section 75-382.

**60-1201 Transferred to section 75-381.**

**60-1202 Transferred to section 75-382.**

## ARTICLE 13

## WEIGHING STATIONS

- Section
- 60-1301. Weighing stations; portable scales; purpose; location; effect as evidence of weight determination; reweighing, when required; pickup trucks; exception; Nebraska State Patrol; rules and regulations.
- 60-1302. Eminent domain; procedure.
- 60-1303. Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations.
- 60-1304. Carrier enforcement officers; transfer; retirement options.
- 60-1305. Carrier enforcement officers; uniform; badge.
- 60-1306. Carrier enforcement officers; powers; funding of firearms.
- 60-1307. Size, weight, load, and registration violations; summons; hearing; promise to appear; violation; penalty; nonresidents, personal appearance required; motor vehicle; seizure and detention; when; release.
- 60-1308. Failure to stop at weighing station or portable scale; violation; penalty.
- 60-1309. Resisting arrest; disobeying order; violation; penalty.

**60-1301 Weighing stations; portable scales; purpose; location; effect as evidence of weight determination; reweighing, when required; pickup trucks; exception; Nebraska State Patrol; rules and regulations.**

In order to promote public safety, to preserve and protect the state highways and bridges and prevent immoderate and destructive use of the same, and to enforce the motor vehicle registration laws, the Department of Transportation shall have the responsibility to construct, maintain, provide, and contract with the Nebraska State Patrol for the operation of weighing stations and provide the funding for the same. The Nebraska State Patrol shall operate the weighing stations, including portable scales, for the weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. Each of the weighing stations shall be located near, on, or adjacent to a state highway upon real estate owned by the State of Nebraska or upon real estate acquired for that purpose. Weights determined on such weighing stations and portable scales shall be presumed to be accurate and shall be accepted in court as prima facie evidence of a violation of the laws relating to the size, weight, load, and registration of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. The owner or driver of a vehicle found to be in violation of such laws by the use of portable scales shall be advised by the officer operating the portable scale that he or she has the right to demand an immediate reweighing at his or her expense at the nearest permanent state-approved scale capable of weighing the vehicle, and if a variance exists between the weights of the permanent and portable scales, then the weights determined on the permanent scale shall prevail. Sections 60-1301 to 60-1309 shall not apply to pickup trucks with a factory-rated capacity of one ton or less, except as may be provided by rules and regulations of the Nebraska State Patrol, or to recreational vehicles as defined in section 71-4603. The Nebraska State Patrol may adopt and promulgate rules and regulations concerning the weighing of pickup trucks with a factory-rated capacity of one ton or less which tow vehicles. Such rules and regulations shall require trucks towing vehicles to comply with sections 60-1301 to 60-1309 when it is necessary to promote the public safety and preserve and protect the state highways and bridges.

**Source:** Laws 1949, c. 109, § 1, p. 300; Laws 1951, c. 116, § 1, p. 525; R.R.S.1943, § 39-603.03; Laws 1955, c. 145, § 1, p. 406; Laws

1961, c. 323, § 1, p. 1027; Laws 1963, c. 373, § 5, p. 1197; Laws 1976, LB 823, § 2; Laws 1985, LB 395, § 4; Laws 2002, LB 470, § 1; Laws 2008, LB797, § 2; Laws 2017, LB339, § 233.

**60-1302 Eminent domain; procedure.**

The Department of Transportation is hereby authorized to take, hold, and acquire by eminent domain so much real estate as may be necessary and convenient to carry out the provisions of section 60-1301. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1949, c. 109, § 2, p. 300; Laws 1951, c. 101, § 88, p. 485; R.R.S.1943, § 39-603.04; Laws 1955, c. 145, § 2, p. 406; Laws 2017, LB339, § 234.

**60-1303 Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations.**

(1) The Nebraska State Patrol is hereby designated as the agency to operate the weighing stations and portable scales and to perform carrier enforcement duties.

(2)(a) On and after July 20, 2002, officers of the Nebraska State Patrol appointed to operate the weighing stations and portable scales and to perform carrier enforcement duties shall be known as the carrier enforcement division. The Superintendent of Law Enforcement and Public Safety shall appoint officers of the Nebraska State Patrol to the carrier enforcement division, including officers as prescribed in sections 81-2001 to 81-2009, and carrier enforcement officers as prescribed in sections 60-1301 to 60-1309.

(b) The employees within the Nebraska State Patrol designated to operate the weighing stations and portable scales and to perform carrier enforcement duties before July 20, 2002, and not authorized to act under subdivisions (1) through (8) of section 81-2005 shall be known as carrier enforcement officers.

(3) All carrier enforcement officers shall be bonded or insured as required by section 11-201. Premiums shall be paid from the money appropriated for the construction, maintenance, and operation of the state weighing stations.

(4) All employees of the Nebraska State Patrol who are carrier enforcement officers and who are not officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 shall be members of the State Employees Retirement System of the State of Nebraska. Officers of the Nebraska State Patrol who are carrier enforcement officers on July 20, 2002, who subsequently become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009, and who elect to remain members of the State Employees Retirement System of the State of Nebraska shall continue to participate in the State Employees Retirement System of the State of Nebraska. Carrier enforcement officers shall not receive any expense allowance as provided for by section 81-2002.

(5) The Nebraska State Patrol and the Department of Transportation shall have the duty, power, and authority to contract with one another for the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties to ensure that there is adequate personnel in the carrier enforcement division to carry out the duties specified

in sections 60-1301 to 60-1309. Through June 30, 2005, the number of full-time equivalent positions funded pursuant to such contract shall be limited to eighty-eight officers, including carrier enforcement officers as prescribed in sections 60-1301 to 60-1309 and officers of the Nebraska State Patrol as prescribed in sections 81-2001 to 81-2009 assigned to the carrier enforcement division. Pursuant to such contract, command of the personnel involved in such carrier enforcement operations shall be with the Nebraska State Patrol. The Department of Transportation may use any funds at its disposal for its financing of such carrier enforcement activity in accordance with such contract as long as such funds are used only to finance those activities directly involved with the duties specified in sections 60-1301 to 60-1309. The Nebraska State Patrol shall account for all appropriations and expenditures related to the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties in a budget program that is distinct and separate from budget programs used for non-carrier-enforcement-division-related activities.

(6) The Nebraska State Patrol may adopt, promulgate, and enforce rules and regulations consistent with statutory provisions related to carrier enforcement necessary for (a) the collection of fees, as outlined in sections 60-3,177 and 60-3,179 to 60-3,182 and the International Fuel Tax Agreement Act, (b) the inspection of licenses and permits required under the motor fuel laws, and (c) weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles.

**Source:** Laws 1955, c. 145, § 3, p. 406; Laws 1978, LB 653, § 21; Laws 1985, LB 395, § 5; Laws 1991, LB 627, § 7; Laws 1994, LB 1066, § 47; Laws 1996, LB 1218, § 15; Laws 2002, LB 470, § 2; Laws 2003, LB 408, § 2; Laws 2004, LB 884, § 32; Laws 2004, LB 983, § 2; Laws 2005, LB 274, § 253; Laws 2007, LB322, § 10; Laws 2017, LB339, § 235.

**Cross References**

**International Fuel Tax Agreement Act**, see section 66-1401.

**60-1304 Carrier enforcement officers; transfer; retirement options.**

(1) Carrier enforcement officers described in subdivision (2)(b) of section 60-1303 who, on or after July 20, 2002, are transferred to the Nebraska State Patrol and become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 shall, within ninety days of transfer, elect to participate in the Nebraska State Patrol Retirement System or elect to remain members of the State Employees Retirement System of the State of Nebraska.

(2) An officer who elects to become a member of the Nebraska State Patrol Retirement System pursuant to this section shall (a) receive eligibility and vesting credit pursuant to subsection (2) of section 81-2016 for his or her years of participation in the State Employees Retirement System of the State of Nebraska, (b) be vested in the employer account with the State Employees Retirement System of the State of Nebraska regardless of his or her period of participation in the State Employees Retirement System, and (c) be treated for all other purposes of the Nebraska State Patrol Retirement Act as a new member of the Nebraska State Patrol Retirement System.

(3) Transferring participation from the State Employees Retirement System of the State of Nebraska to the Nebraska State Patrol Retirement System pursuant to this section does not constitute a termination for purposes of the State Employees Retirement Act.

**Source:** Laws 2002, LB 470, § 4.

**Cross References**

**Nebraska State Patrol Retirement Act**, see section 81-2014.01.

**60-1305 Carrier enforcement officers; uniform; badge.**

When the carrier enforcement officers are on duty as such, they shall be dressed in a distinctive uniform and display a distinctive badge of office. The superintendent of the Nebraska State Patrol shall issue a distinctive badge of office, with a seal of this state in the center thereof and with the designation of the officer thereon. Every such badge shall be serially numbered.

**Source:** Laws 1955, c. 145, § 5, p. 407; Laws 1985, LB 395, § 6.

**60-1306 Carrier enforcement officers; powers; funding of firearms.**

The carrier enforcement officers shall have the power (1) of peace officers solely for the purpose of enforcing the International Fuel Tax Agreement Act and the provisions of law relating to the size, weight, and load and the Motor Vehicle Registration Act pertaining to buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles, (2) when in uniform, to require the driver thereof to stop and exhibit his or her operator's license and registration issued for the vehicle and submit to an inspection of such vehicle, the license plates, the registration thereon, and licenses and permits required under the motor fuel laws, (3) to make arrests upon view and without warrant for any violation committed in their presence of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07, (4) to make arrests upon view and without warrant for any violation committed in their presence which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07, and (5) to make arrests on warrant for any violation which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07.

Any funds used to arm carrier enforcement officers shall be paid solely from the Carrier Enforcement Cash Fund. The amount of funds shall be determined by the Superintendent of Law Enforcement and Public Safety.

**Source:** Laws 1955, c. 145, § 6, p. 407; Laws 1963, c. 373, § 6, p. 1197; Laws 1983, LB 412, § 2; Laws 1985, LB 395, § 7; Laws 1986, LB 783, § 3; Laws 1991, LB 627, § 8; Laws 1994, LB 28, § 1; Laws 1996, LB 1218, § 16; Laws 2002, LB 499, § 4; Laws 2003, LB 480, § 1; Laws 2004, LB 983, § 3; Laws 2005, LB 274, § 254; Laws 2006, LB 1007, § 12.

**Cross References**

**International Fuel Tax Agreement Act**, see section 66-1401.



**Motor Vehicle Operator's License Act**, see section 60-462.

**Motor Vehicle Registration Act**, see section 60-301.

The arrest powers granted to carrier enforcement officers under this section do not allow arrests for all stated law violations which are observed while on duty, but are limited to arrests only for such stated violations which are viewed by the officer while performing a function specifically related to the

duties enumerated in subsections (1) and (2) of this section or a function specifically related to those duties addressed in the statutes and laws referred to in subsections (3), (4), and (5) of this section. *State v. Langan*, 6 Neb. App. 739, 577 N.W.2d 752 (1998).

**60-1307 Size, weight, load, and registration violations; summons; hearing; promise to appear; violation; penalty; nonresidents, personal appearance required; motor vehicle; seizure and detention; when; release.**

(1) Whenever any person is arrested at one of the state weighing stations or portable scales for a violation of the laws relating to the trip permit provided in section 66-1418, the Motor Vehicle Registration Act, or the laws relating to the size, weight, and load of buses, trucks, truck-tractors, semitrailers, trailers, or towed vehicles, the arresting officer shall take the name and address of such person and the license number of his or her motor vehicle and issue a summons or otherwise notify him or her in writing to appear at a time and place to be specified in such summons or notice, such time to be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he or she desires, have a right to an immediate hearing or a hearing within twenty-four hours at a convenient hour. The hearing shall be before a magistrate within the county in which the offense was committed. Such officer shall, upon such person giving a written promise to appear at such time and place, release him or her from custody. Such person arrested and released shall not be permitted to operate the motor vehicle concerned until it is in compliance with the Motor Vehicle Registration Act and section 60-6,301. Any person refusing to give such written promise to appear shall be immediately taken by the arresting officer before the nearest or most accessible magistrate. Any person who willfully violates a written promise to appear given in accordance with this section shall be guilty of a Class III misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(2) Subsection (1) of this section shall not apply to any person not a resident of the State of Nebraska. The arresting officer shall take such person forthwith before the nearest or most accessible magistrate.

(3)(a) The arresting officer shall seize and detain the motor vehicle concerned until the motor vehicle is in compliance with section 60-6,294 or in conformity with the exceptions permitted by section 60-6,301, and unless all the violations pending before the magistrate relating to section 60-6,294 have been the subject of a conviction, acquittal, or dismissal and all related fines and costs have been paid, the arresting officer may detain the motor vehicle concerned when the officer has reasonable grounds to believe that (i) the accused will refuse to respond to the citation, (ii) the accused has no ties to the jurisdiction reasonably sufficient to assure his or her appearance in court, or (iii) the accused has previously failed to appear in response to a citation.

(b) If a motor vehicle detained pursuant to this section is transporting livestock, procedures and precautions shall be taken if necessary to ensure the health and welfare of such livestock while the motor vehicle is detained.

(c) A motor vehicle detained pursuant to this subsection shall be released upon execution of a bond with such surety or sureties as the court deems proper or, in lieu of such surety or sureties and at the option of the accused, a cash deposit, conditioned upon his or her appearance before the proper court

to answer the offense for which he or she may be charged and to appear at such times thereafter as the court so orders. Such bond shall be in an amount as set forth in the schedule adopted pursuant to section 29-901.05 and shall be administered, subject to review and forfeiture, in the same manner as bail bonds, except that for violations of section 60-6,294, such bond or cash deposit shall be in an amount not less than the sum of costs together with the appropriate fine prescribed in section 60-6,296.

(d) In addition to the operator, any owner or lessee of the motor vehicle may execute the bond or make the cash deposit required by this section. Upon execution of the bond or cash deposit, the arresting or custodial officer shall release the motor vehicle and cargo to the person who executed the bond or deposited the cash or to the designee of such person.

(e) Towing and storage charges, if any, shall be paid by the person to whom the motor vehicle is released prior to the release of the motor vehicle. Such charges shall be assessed as costs in any action for the forfeiture of the recognizance.

(4) Nothing in this section shall (a) prevent the owner or the owner's representative of such motor vehicle or the cargo on the motor vehicle from taking possession of the cargo and transferring it to another vehicle or taking possession of the cargo and the trailer, if the trailer can be separated from the power unit, or (b) create any liability for the state arising out of damage to such motor vehicle and its cargo.

**Source:** Laws 1955, c. 145, § 7, p. 407; Laws 1957, c. 279, § 1, p. 1010; Laws 1963, c. 373, § 7, p. 1198; Laws 1977, LB 39, § 90; Laws 1985, LB 395, § 8; Laws 1986, LB 783, § 4; Laws 1987, LB 307, § 1; Laws 1993, LB 370, § 471; Laws 2004, LB 983, § 4; Laws 2005, LB 274, § 255.

#### Cross References

**Motor Vehicle Registration Act**, see section 60-301.

#### **60-1308 Failure to stop at weighing station or portable scale; violation; penalty.**

The driver of any motor truck, truck-tractor, semitrailer, trailer, or towed vehicle who fails to obey any sign, message board, or in-cab signal from any state weighing station or portable scale or who knowingly passes or bypasses any state weighing station or portable scale, when the station or scale is open and being operated by an officer of the Nebraska State Patrol, is guilty of a Class III misdemeanor.

**Source:** Laws 1955, c. 145, § 8, p. 408; Laws 1959, c. 302, § 1, p. 1130; Laws 1963, c. 373, § 8, p. 1199; Laws 1977, LB 39, § 91; Laws 1985, LB 395, § 9; Laws 2003, LB 481, § 1.

#### **60-1309 Resisting arrest; disobeying order; violation; penalty.**

Any person who fails or refuses to obey any lawful order of a carrier enforcement officer or who resists lawful arrest by any such officer shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1955, c. 145, § 9, p. 408; Laws 1977, LB 39, § 92; Laws 1985, LB 395, § 10.

**MOTOR VEHICLE INDUSTRY LICENSING**

**ARTICLE 14**

**MOTOR VEHICLE INDUSTRY LICENSING**

Section	
60-1401.	Act, how cited; applicability of amendments.
60-1401.01.	Legislative findings and declaration.
60-1401.02.	Definitions, where found.
60-1401.03.	Association, defined.
60-1401.04.	Auction, defined.
60-1401.05.	Auction dealer, defined.
60-1401.06.	Board, defined.
60-1401.07.	Bona fide consumer, defined.
60-1401.08.	Coerce, defined.
60-1401.09.	Community, defined.
60-1401.10.	Consumer care, defined.
60-1401.11.	Dealer's agent, defined.
60-1401.12.	Designated family member, defined.
60-1401.13.	Distributor, defined.
60-1401.14.	Distributor representative, defined.
60-1401.15.	Established place of business, defined.
60-1401.16.	Factory branch, defined.
60-1401.17.	Factory representative, defined.
60-1401.18.	Finance company, defined.
60-1401.19.	Franchise, defined.
60-1401.20.	Franchisee, defined.
60-1401.21.	Franchisor, defined.
60-1401.22.	Line-make, defined.
60-1401.23.	Manufactured home, defined.
60-1401.24.	Manufacturer, defined.
60-1401.25.	Motor vehicle, defined.
60-1401.26.	Motor vehicle dealer, defined.
60-1401.27.	Motor vehicle, motorcycle, or trailer salesperson, defined.
60-1401.28.	Motorcycle, defined.
60-1401.29.	Motorcycle dealer, defined.
60-1401.30.	New motor vehicle, defined.
60-1401.31.	Person, defined.
60-1401.32.	Retail, defined.
60-1401.33.	Sale and selling, defined.
60-1401.34.	Scrap metal processor, defined.
60-1401.35.	Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer, defined.
60-1401.36.	Trailer, defined.
60-1401.37.	Trailer dealer, defined.
60-1401.38.	Used motor vehicle, defined.
60-1401.39.	Violator, defined.
60-1401.40.	Wrecker or salvage dealer, defined.
60-1401.41.	Applicability of act; persons not considered dealer.
60-1401.42.	Autocycle, defined.
60-1401.43.	Stop-sale order, defined.
60-1402.	Board; creation; membership; qualifications; appointment; term; per diem; traveling expenses.
60-1403.	Board; investigators; powers and duties; seal; records; authentication; review of action; when.
60-1403.01.	License required; restriction on issuance; exception.
60-1404.	Executive director; duties; meetings of board; attorney; other employees; salaries; office at capitol.
60-1405.	Attorney General; attorney for board; fees and expenses.
60-1406.	Licenses; classes.
60-1407.	Application for license; contents.
60-1407.01.	License; application; filing; investigation; report; contents; requirements; revocation of license; when.

## MOTOR VEHICLES

- Section
- 60-1407.02. Sales tax permit; authorized use; violations; penalty.
  - 60-1407.03. Special permit for sale at other than established place of business; issuance.
  - 60-1407.04. Special permit for sale at other than established place of business; approval; conditions.
  - 60-1407.05. Repealed. Laws 2000, LB 1018, § 10.
  - 60-1407.06. Special permit for sale at other than established place of business; rules and regulations; fee.
  - 60-1408. Repealed. Laws 1971, LB 768, § 40.
  - 60-1409. Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.
  - 60-1410. License; form; display; pocket card.
  - 60-1411. Notice of changes; return of pocket card; required when.
  - 60-1411.01. Administration and enforcement expenses; how paid; fees; licenses; expiration.
  - 60-1411.02. Investigation; denial of application; revocation or suspension of license; probation; administrative fine; grounds.
  - 60-1411.03. Unauthorized acts.
  - 60-1411.04. Advertising; violations; penalty.
  - 60-1412. Repealed. Laws 1971, LB 768, § 40.
  - 60-1413. Disciplinary actions; procedure.
  - 60-1414. Denial, revocation, or suspension of license or registration; hearing; attendance of witness; production of books and papers; effect.
  - 60-1415. Disciplinary actions; findings of board; order; restitution; appeal; distribution of fines.
  - 60-1415.01. Restraining order.
  - 60-1416. Acting without license; penalty.
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  - 60-1417.01. Auction dealer; records; requirements; sale on consignment; title; exception.
  - 60-1417.02. Auction; registration of seller; exception.
  - 60-1418. Motor vehicle sale; violation; penalty.
  - 60-1419. Dealer's licenses; bond; conditions.
  - 60-1420. Franchise; termination; noncontinuance; change community; hearing; when required.
  - 60-1421. Franchise; termination; effect.
  - 60-1422. Franchise; hearing; approval.
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  - 60-1424. Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application.
  - 60-1425. Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application; hearing; notice.
  - 60-1426. Franchise; termination; additional; application; hearing; continuance.
  - 60-1427. Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.
  - 60-1428. Franchise; discovery; inspection; rules of civil procedure.
  - 60-1429. Franchise; termination; noncontinuation; change community; additional dealership; acts not constituting good cause.
  - 60-1430. Franchise; sale or transfer of ownership; franchisor; duties.
  - 60-1430.01. Succession to new motor vehicle dealership by family member; conditions.
  - 60-1430.02. Franchise termination, cancellation, or noncontinuation; termination, elimination, or cessation of line-make; payments required; mitigate damages.
  - 60-1431. Franchise; board; power of subpoena; administer oaths; compel witnesses and production of books, papers, documents; enforcement.
  - 60-1432. Franchise; denial; license refused.
  - 60-1433. Franchise; termination; discontinuance; evidence of good cause.
  - 60-1434. Franchise; additional; service facility; evidence of good cause.
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Section	
60-1436.	Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.
60-1437.	Manufacturer or distributor; prohibited acts with respect to new motor vehicles.
60-1438.	Manufacturer or distributor; warranty obligation; prohibited acts.
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60-1441.	New motor vehicle dealers; recall repairs; compensation; stop-sale or do-not-drive order; compensation; applicability of section; prohibited acts.

### **60-1401 Act, how cited; applicability of amendments.**

Sections 60-1401 to 60-1441 shall be known and may be cited as the Motor Vehicle Industry Regulation Act.

Any amendments to the act shall apply to franchises subject to the act which are entered into, amended, altered, modified, renewed, or extended after the date of the amendments to the act except as otherwise specifically provided in the act.

All amendments to the act shall apply upon the issuance or renewal of a dealer's or manufacturer's license.

**Source:** Laws 2010, LB816, § 12; Laws 2011, LB477, § 1; Laws 2013, LB133, § 1; Laws 2015, LB231, § 39; Laws 2018, LB909, § 112.

### **60-1401.01 Legislative findings and declaration.**

(1) The Legislature finds and declares that the distribution and sales of motor vehicles, motorcycles, and trailers in the State of Nebraska vitally affects the general economy of the state, the public interest, the public welfare, and public safety and that in order to promote the public interest and the public welfare and in the exercise of its police power, it is necessary to regulate motor vehicle, motorcycle, and trailer dealers, manufacturers, distributors, and their representatives doing business in the State of Nebraska.

(2) The Legislature further finds that the sales of motor vehicles, motorcycles, and trailers are involved to a large extent in a franchise system established between manufacturers and dealers and hereby declares that the sale of motor vehicles, motorcycles, and trailers to the public in the state under the franchise system includes more than the mere transfer of title, being a continuing obligation of the manufacturer, distributor, and dealer to the buying public affecting the public interest; that the termination or failure of the established relationship between the manufacturer, distributor, and dealer without cause or good faith denies to the general buying public its right to availability of continuing post-sale mechanical and operational services and precludes the relationship, expected and implied at the time of sale, between the buyer and the seller necessary to insure safe operating condition of the vehicle.

(3) The Legislature further finds and declares that the distribution and sale of motor vehicles in the state under the franchise system vitally affects commerce, the general economy of the state, and the welfare of the citizens of the state requiring the exercise of its police power to insure the public welfare, to regulate commerce, to establish guidelines for enforcement of a fair and

equitable balance between parties to such franchises, and to provide judicial relief from unfair and inequitable practices affecting the public interest.

**Source:** Laws 1971, LB 768, § 1; Laws 2010, LB816, § 13.

In refusing to consider petitioner's challenge of the constitutionality of this act, the court held a litigant who invokes the provisions of a statute may not simultaneously question its constitutionality. *American Motors Sales Corp. v. Perkins*, 198 Neb. 97, 251 N.W.2d 727 (1977).

#### **60-1401.02 Definitions, where found.**

For purposes of the Motor Vehicle Industry Regulation Act, the definitions found in sections 60-1401.03 to 60-1401.40, 60-1401.42, and 60-1401.43 apply.

**Source:** Laws 1971, LB 768, § 2; Laws 1972, LB 1335, § 1; Laws 1974, LB 754, § 1; Laws 1978, LB 248, § 3; Laws 1983, LB 234, § 18; Laws 1984, LB 825, § 12; Laws 1989, LB 280, § 1; Laws 1993, LB 121, § 388; Laws 1993, LB 200, § 1; Laws 1995, LB 564, § 2; Laws 1996, LB 1035, § 1; Laws 1998, LB 903, § 3; Laws 2000, LB 1018, § 1; Laws 2003, LB 498, § 1; Laws 2003, LB 563, § 34; Laws 2005, LB 274, § 256; Laws 2008, LB797, § 3; Laws 2009, LB50, § 1; Laws 2010, LB816, § 14; Laws 2015, LB231, § 40; Laws 2018, LB909, § 113.

Terms of dealer's license do not require dealer to provide safe tools for dealer's employees. *Durand v. Western Surety Co.*, 245 Neb. 649, 514 N.W.2d 840 (1994).

#### **60-1401.03 Association, defined.**

Association means any two or more persons acting with a common purpose, regardless of the relative degrees of involvement, and includes, but is not limited to, the following persons so acting:

(1) A person and one or more of his or her family members. For purposes of this subdivision, family member means an individual related to the person by blood, marriage, adoption, or legal guardianship as the person's spouse, child, parent, brother, sister, grandchild, grandparent, ward, or legal guardian or any individual so related to the person's spouse; and

(2) Two or more persons living in the same dwelling unit, whether or not related to each other.

**Source:** Laws 2010, LB816, § 15.

#### **60-1401.04 Auction, defined.**

Auction means a sale of motor vehicles and trailers of types required to be registered in this state, except such vehicles as are eligible for registration pursuant to section 60-3,198, sold or offered for sale at which the price offered is increased by the prospective buyers who bid against one another, the highest bidder becoming the purchaser. The holding of a farm auction or an occasional motor vehicle or trailer auction of not more than two auctions in a calendar year does not constitute an auction subject to the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2010, LB816, § 16.

**60-1401.05 Auction dealer, defined.**

Auction dealer means any person engaged in the business of conducting an auction for the sale of motor vehicles and trailers.

**Source:** Laws 2010, LB816, § 17.

**60-1401.06 Board, defined.**

Board means the Nebraska Motor Vehicle Industry Licensing Board.

**Source:** Laws 2010, LB816, § 18.

**60-1401.07 Bona fide consumer, defined.**

Bona fide consumer means an owner of a motor vehicle, motorcycle, or trailer who has acquired such vehicle for use in business or for pleasure purposes, who has been granted a certificate of title on such motor vehicle, motorcycle, or trailer, and who has registered such motor vehicle, motorcycle, or trailer, all in accordance with the laws of the residence of the owner, except that no owner who sells more than eight registered motor vehicles, motorcycles, or trailers within a twelve-month period shall qualify as a bona fide consumer.

**Source:** Laws 2010, LB816, § 19.

**60-1401.08 Coerce, defined.**

Coerce means to compel a dealer or manipulate a dealer to behave in an involuntary way, whether through action or inaction, by use of threats, intimidation, trickery, or some other form of pressure or force.

**Source:** Laws 2010, LB816, § 20.

**60-1401.09 Community, defined.**

Community means a franchisee's area of responsibility as stipulated in the franchise or, if the franchise fails to designate a community, (1) the community of the franchisee is the area surrounding the location of the franchisee in a five-mile radius from the dealership if the location is within a city of the metropolitan class and (2) the community of the franchisee is the county in which the franchisee is located if the location is not within a city of the metropolitan class.

**Source:** Laws 2010, LB816, § 21.

**60-1401.10 Consumer care, defined.**

Consumer care means the performance, for the public, of necessary maintenance and repairs to motor vehicles.

**Source:** Laws 2010, LB816, § 22.

**60-1401.11 Dealer's agent, defined.**

Dealer's agent means a person who acts as a buying agent for one or more motor vehicle dealers, motorcycle dealers, or trailer dealers.

**Source:** Laws 2010, LB816, § 23.

**60-1401.12 Designated family member, defined.**

Designated family member means the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the

case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will, who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of such dealership, has been appointed by a court as the legal representative of the new motor vehicle dealer's property.

**Source:** Laws 2010, LB816, § 24.

**60-1401.13 Distributor, defined.**

Distributor means a person, resident or nonresident of this state, who, in whole or in part, sells or distributes new motor vehicles, trailers, or motorcycles to dealers or who maintains distributors or representatives who sell or distribute motor vehicles, trailers, or motorcycles to dealers and also has the same meaning as the term franchisor.

**Source:** Laws 2010, LB816, § 25.

**60-1401.14 Distributor representative, defined.**

Distributor representative means a representative employed by a distributor or distributor branch for the same purpose as set forth in the definition of factory representative.

**Source:** Laws 2010, LB816, § 26.

**60-1401.15 Established place of business, defined.**

(1) Established place of business means a permanent location within this state, easily accessible to the public, owned or leased by the applicant or a licensee for at least the term of the license year, and conforming with applicable zoning laws, at which the licensee conducts the business for which he or she is licensed and may be contacted by the public during posted reasonable business hours which shall be not less than forty hours per week.

(2) The established place of business shall have the following facilities:

(a) Office space in a building or mobile home, which space shall be clean, dry, safe, and well lighted and in which shall be kept and maintained all books, records, and files necessary for the conduct of the licensed business, which premises, books, records, and files shall be available for inspection during regular business hours by any peace officer or investigator employed or designated by the board. Dealers shall, upon demand of the board's investigator, furnish copies of records so required when conducting any investigation of a complaint;

(b) A sound and well-maintained sign which is legible from a public road and displayed with letters not less than eight inches in height and one contiguous area to display ten or more motor vehicles, motorcycles, or trailers in a presentable manner;

(c) Adequate repair facilities and tools to properly and actually service warranties on motor vehicles, motorcycles, or trailers sold at such place of business and to make other repairs arising out of the conduct of the licensee's business or, in lieu of such repair facilities, the licensee may enter into a contract for the provision of such service and file a copy thereof annually with the board and shall furnish to each buyer a written statement as to where such service will be provided as required by section 60-1417. The service facility shall be located in the same county as the licensee unless the board specifically



authorizes the facility to be located elsewhere. Such facility shall maintain regular business hours and shall have suitable repair equipment and facilities to service and inspect the type of vehicles sold by the licensee. Investigators of the board may certify ongoing compliance with the service and inspection facilities or repair facilities; and

(d) An operating telephone connected with a public telephone exchange and located on the premises of the established place of business with a telephone number listed by the public telephone exchange and available to the public during the required posted business hours.

(3) A mobile truck equipped with repair facilities to properly perform warranty functions and other repairs shall be deemed adequate repair facilities for trailers.

(4) The requirements of this section shall apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license.

**Source:** Laws 2010, LB816, § 27.

#### **60-1401.16 Factory branch, defined.**

Factory branch means a branch office maintained in this state by a person who manufactures, assembles, or distributes motor vehicles, motorcycles, or trailers for the sale of such motor vehicles, motorcycles, or trailers to distributors or dealers or for directing or supervising, in whole or in part, its representatives in this state.

**Source:** Laws 2010, LB816, § 28.

#### **60-1401.17 Factory representative, defined.**

Factory representative means a representative employed by a person who manufactures or assembles motor vehicles, motorcycles, or trailers, or by a factory branch, for the purpose of promoting the sale of its motor vehicles, motorcycles, or trailers to, or for supervising or contacting, its dealers or prospective dealers in this state.

**Source:** Laws 2010, LB816, § 29.

#### **60-1401.18 Finance company, defined.**

Finance company means any person engaged in the business of financing sales of motor vehicles, motorcycles, or trailers, or purchasing or acquiring promissory notes, secured instruments, or other documents by which the motor vehicles, motorcycles, or trailers are pledged as security for payment of obligations arising from such sales and who may find it necessary to engage in the activity of repossession and the sale of the motor vehicles, motorcycles, or trailers so pledged.

**Source:** Laws 2010, LB816, § 30.

#### **60-1401.19 Franchise, defined.**

Franchise means a contract between two or more persons when all of the following conditions are included:

(1) A commercial relationship of definite duration or continuing indefinite duration is involved;

(2) The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchisor;

(3) The franchisee, as an independent business, constitutes a component of the franchisor's distribution system;

(4) The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchisor; and

(5) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of motor vehicles, parts, and accessories.

**Source:** Laws 2010, LB816, § 31.

**60-1401.20 Franchisee, defined.**

Franchisee means a new motor vehicle dealer who receives motor vehicles from the franchisor under a franchise and who offers and sells such motor vehicles to the general public.

**Source:** Laws 2010, LB816, § 32.

**60-1401.21 Franchisor, defined.**

Franchisor means a person who manufactures or distributes motor vehicles and who may enter into a franchise.

**Source:** Laws 2010, LB816, § 33.

**60-1401.22 Line-make, defined.**

Line-make means a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or distribution pursuant to a common brand name or mark, except that:

(1) Multiple brand names or marks may constitute a single line-make, but only when included in a common dealer agreement and the manufacturer, distributor, or importer offers such vehicles bearing the multiple names or marks together only, and not separately, to its authorized dealers; and

(2) Motor vehicles bearing a common brand name or mark may constitute separate line-makes when pertaining to motor vehicles subject to separate dealer agreements or when such vehicles are intended for different types of use.

**Source:** Laws 2010, LB816, § 34.

**60-1401.23 Manufactured home, defined.**

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, except that manufactured home includes any structure that meets all of the requirements of this section other than the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under the

National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as such act existed on January 1, 2010.

**Source:** Laws 2010, LB816, § 35.

**60-1401.24 Manufacturer, defined.**

Manufacturer means any person, resident or nonresident of this state, who is engaged in the business of distributing, manufacturing, or assembling a line-make of new motor vehicles, trailers, or motorcycles and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle, trailer, or motorcycle dealers in this state and also has the same meaning as the term franchisor.

Manufacturer also includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, a manufacturer distributes its products.

**Source:** Laws 2010, LB816, § 36.

**60-1401.25 Motor vehicle, defined.**

Motor vehicle means any vehicle for which evidence of title is required as a condition precedent to registration under the laws of this state but does not include trailers.

Motor vehicle also means any engine, transmission, or rear axle, regardless of whether attached to a vehicle chassis, that is manufactured for installation in any motor-driven vehicle with a gross vehicle weight rating of more than sixteen thousand pounds for which motor-driven vehicle evidence of title is required as a condition precedent to registration under the laws of this state.

**Source:** Laws 2010, LB816, § 37.

**60-1401.26 Motor vehicle dealer, defined.**

Motor vehicle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the act of selling, leasing for a period of thirty or more days, or exchanging new or used motor vehicles, trailers, and manufactured homes who buys, sells, exchanges, causes the sale of, or offers or attempts to sell new or used motor vehicles. Such person is a motor vehicle dealer and subject to the Motor Vehicle Industry Regulation Act.

Motor vehicle dealer does not include a lessor who was not involved in or associated with the selection, location, acquisition, or supply of a motor vehicle which is the subject of a lease agreement.

**Source:** Laws 2010, LB816, § 38.

The definition of a motor vehicle dealer under this section entails three requirements. To be a motor vehicle dealer, a person must (1) not be a bona fide consumer; (2) be actively and regularly engaged in selling, leasing for a period of 30 or more

days, or exchanging new or used motor vehicles; and (3) buy, sell, exchange, cause the sale of, or offer or attempt to sell new or used motor vehicles. *State v. Merchant*, 288 Neb. 439, 848 N.W.2d 630 (2014).

**60-1401.27 Motor vehicle, motorcycle, or trailer salesperson, defined.**

Motor vehicle, motorcycle, or trailer salesperson means any person who, for a salary, commission, or compensation of any kind, is employed directly by only one specified licensed Nebraska motor vehicle dealer, motorcycle dealer, or trailer dealer, except when the salesperson is working for two or more dealerships with common ownership, to sell, purchase, or exchange or to negotiate

for the sale, purchase, or exchange of motor vehicles, motorcycles, or trailers. A person owning any part of more than one dealership may be a salesperson for each of such dealerships. For purposes of this section, common ownership means that there is at least an eighty percent interest in each dealership by one or more persons having ownership in such dealership.

**Source:** Laws 2010, LB816, § 39.

**60-1401.28 Motorcycle, defined.**

Motorcycle means every motor vehicle, except a tractor, having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground and for which evidence of title is required as a condition precedent to registration under the laws of this state. Motorcycle includes an autocycle.

**Source:** Laws 2010, LB816, § 40; Laws 2015, LB231, § 42; Laws 2018, LB909, § 116.

**60-1401.29 Motorcycle dealer, defined.**

Motorcycle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the business of selling or exchanging new or used motorcycles.

**Source:** Laws 2010, LB816, § 41.

**60-1401.30 New motor vehicle, defined.**

New motor vehicle means all motor vehicles which are not included within the definition of a used motor vehicle.

**Source:** Laws 2010, LB816, § 42.

**60-1401.31 Person, defined.**

Person means every natural person, firm, partnership, limited liability company, association, or corporation.

**Source:** Laws 2010, LB816, § 43.

**60-1401.32 Retail, defined.**

Retail, when used to describe a sale, means a sale to any person other than a licensed dealer of any kind licensed under the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2010, LB816, § 44.

**60-1401.33 Sale and selling, defined.**

Sale, selling, and equivalent expressions mean the attempted act or acts either as principal, agent, or salesperson or in any capacity whatsoever of selling, bartering, exchanging, or otherwise disposing of or negotiating or offering or attempting to negotiate the sale, purchase, or exchange of or interest in any motor vehicle, trailer, or motorcycle, including the leasing of any motor vehicle, trailer, or motorcycle for a period of thirty or more days with a right or option to purchase under the terms of the lease.

**Source:** Laws 2010, LB816, § 45.

**60-1401.34 Scrap metal processor, defined.**

Scrap metal processor means any person engaged in the business of buying vehicles, motorcycles, or parts thereof for the purpose of remelting or processing into scrap metal or who otherwise processes ferrous or nonferrous metallic scrap for resale.

No scrap metal processor shall sell vehicles or motorcycles without obtaining a wrecker or salvage dealer license.

**Source:** Laws 2010, LB816, § 46.

**60-1401.35 Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer, defined.**

Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer means any person holding either a motor vehicle, trailer, motorcycle, or motor vehicle auction dealer's license engaging in the business authorized by such license at a place of business that is more than three hundred feet from any part of the place of business designated in the dealer's original license but which is located within the city or county described in such original license.

**Source:** Laws 2010, LB816, § 47.

**60-1401.36 Trailer, defined.**

Trailer means semitrailers and trailers as defined in sections 60-348 and 60-354, respectively, which are required to be licensed as commercial trailers, other vehicles without motive power constructed so as to permit their being used as conveyances upon the public streets and highways and so constructed as not to be attached to real estate and to permit the vehicle to be used for human habitation by one or more persons, and camping trailers, slide-in campers, fold-down campers, and fold-down tent trailers.

Machinery and equipment to which wheels are attached and designed for being towed by a motor vehicle are excluded from the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2010, LB816, § 48.

**60-1401.37 Trailer dealer, defined.**

Trailer dealer means any person, other than a bona fide consumer, actively and regularly engaged in the business of selling or exchanging new or used trailers and manufactured homes.

**Source:** Laws 2010, LB816, § 49.

**60-1401.38 Used motor vehicle, defined.**

Used motor vehicle means every motor vehicle which has been sold, bargained, exchanged, or given away or for which title has been transferred from the person who first acquired it from the manufacturer, importer, dealer, or agent of the manufacturer or importer.

A new motor vehicle is not considered a used motor vehicle until it has been placed in use by a bona fide consumer, notwithstanding the number of transfers of the motor vehicle.

**Source:** Laws 2010, LB816, § 50.

**60-1401.39 Violator, defined.**

Violator means a person acting without a license or registration as required by the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2010, LB816, § 51.

**60-1401.40 Wrecker or salvage dealer, defined.**

Wrecker or salvage dealer means any person who acquires one or more motor vehicles or trailers for the purpose of dismantling them for the purpose of reselling the parts or reselling the vehicles as scrap.

**Source:** Laws 2010, LB816, § 52.

**60-1401.41 Applicability of act; persons not considered dealer.**

(1) Nothing in the Motor Vehicle Industry Regulation Act shall apply to the State of Nebraska or any of its agencies or subdivisions.

(2) No insurance company, finance company, public utility company, fleet owner, or other person coming into possession of any motor vehicle, motorcycle, or trailer, as an incident to its regular business, who sells or exchanges the motor vehicle, motorcycle, or trailer shall be considered a dealer except persons whose regular business is leasing or renting motor vehicles, motorcycles, or trailers.

**Source:** Laws 2010, LB816, § 53.

**60-1401.42 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) having antilock brakes, (4) designed to be controlled with a steering wheel and pedals, and (5) in which the operator and passenger ride either side by side or in tandem in a seating area that is equipped with a manufacturer-installed three-point safety belt system for each occupant and that has a seating area that either (a) is completely enclosed and is equipped with manufacturer-installed airbags and a manufacturer-installed roll cage or (b) is not completely enclosed and is equipped with a manufacturer-installed rollover protection system.

**Source:** Laws 2015, LB231, § 41; Laws 2018, LB909, § 117.

**60-1401.43 Stop-sale order, defined.**

Stop-sale order means a notification issued by a manufacturer, distributor, factory branch, or distributor branch to its franchised new motor vehicle dealers stating that certain used motor vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or a noncompliance or due to a federal emissions recall.

**Source:** Laws 2018, LB909, § 114.

**60-1402 Board; creation; membership; qualifications; appointment; term; per diem; traveling expenses.**

(1) There is hereby established the Nebraska Motor Vehicle Industry Licensing Board which shall consist of the Director of Motor Vehicles, who shall be the chairperson of the board, and nine members appointed by the Governor as

follows: One factory representative, one member of the general public, and one motorcycle dealer, all of whom shall be appointed from the state at large, one new motor vehicle dealer from each of the three congressional districts of the state as the districts are constituted on October 19, 1963, and two used motor vehicle dealers and one trailer dealer or combination motor vehicle or trailer dealer, not more than one used motor vehicle dealer being appointed from the same congressional district as they are constituted on October 19, 1963, and the trailer dealer or combination motor vehicle or trailer dealer being appointed from the state at large. No member of the board shall participate in any manner in a proceeding before the board involving his or her licensed business.

(2) On October 19, 1963, the Governor shall appoint a new motor vehicle dealer and a trailer dealer or combination motor vehicle or trailer dealer to the board. In making the appointments, the Governor shall appoint one of the new members for one year and one for two years as designated by the Governor in making the appointments. On January 1, 1972, the Governor shall appoint one factory representative and one member of the general public to the board, designating one to serve for a term of one year and one for a term of two years. On January 1, 1974, the Governor shall appoint one motorcycle dealer to serve for a term of three years. At the expiration of the term of any appointed member of the board, the Governor shall appoint a successor for a term of three years. In the event of a vacancy on the board, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. No member appointed shall serve more than two consecutive terms. The action of the majority of the members of the board shall be deemed the action of the board. All appointments made to the board, except the Director of Motor Vehicles, shall be confirmed by the Legislature if in session. In the event the Legislature is not in session all appointments including appointments to fill a vacancy shall be temporary appointments until the next meeting of the Legislature when the Governor shall nominate some person to fill the office. Any person so nominated who is confirmed by the Legislature shall hold office during the remainder of the term. No appointed person may act as a member of the board while holding any other elective or appointive state or federal office except the Director of Motor Vehicles. All appointed members of the board shall be paid fifty dollars for each day actually engaged in the performance of their duties and be entitled to their reasonable traveling expenses in the performance of their duties.

**Source:** Laws 1957, c. 280, § 2, p. 1014; Laws 1961, c. 282, § 2, p. 823; Laws 1963, c. 365, § 3, p. 1169; Laws 1971, LB 768, § 3; Laws 1973, LB 443, § 1; Laws 1974, LB 754, § 2; Laws 1978, LB 248, § 4; Laws 2010, LB816, § 54.

#### Cross References

For current limits and designation of congressional districts, see section 32-504.

The composition of the Nebraska Motor Vehicle Industry Licensing Board is not inherently biased against automobile manufacturers, and therefore, the composition of the board does not violate the manufacturer's due process rights. *Chrysler Motors Corp. v. Lee Janssen Motor Co.*, 248 Neb. 322, 534 N.W.2d 309 (1995).

**60-1403 Board; investigators; powers and duties; seal; records; authentication; review of action; when.**

(1) The board may:

(a) Regulate the issuance and revocation of licenses in accordance with and subject to the Motor Vehicle Industry Regulation Act;

(b) Perform all acts and duties provided for in the act necessary to the administration and enforcement of the act; and

(c) Make and enforce rules and regulations relating to the administration of but not inconsistent with the act.

(2) The board shall adopt a seal, which may be either an engraved or ink stamp seal, with the words Nebraska Motor Vehicle Industry Licensing Board and such other devices as the board may desire included on the seal by which it shall authenticate the acts of its office. Copies of all records and papers in the office of the board under the hand and seal of its office shall be received in evidence in all cases equally and with like effect as the original.

(3) Investigators employed by the board may enter upon and inspect the facilities, the required records, and any vehicles, trailers, or motorcycles found in any licensed motor vehicle, motorcycle, or trailer dealer's established place or places of business.

(4) With respect to any action taken by the board, if a controlling number of the members of the board are active participants in the vehicle market in which the action is taken, the chairperson shall review the action taken and, upon completion of such review, modify, alter, approve, or reject the board's action.

**Source:** Laws 1957, c. 280, § 3, p. 1015; Laws 1967, c. 394, § 3, p. 1229; Laws 1971, LB 768, § 4; Laws 1994, LB 850, § 1; Laws 1995, LB 564, § 3; Laws 2010, LB816, § 55; Laws 2016, LB977, § 26.

**60-1403.01 License required; restriction on issuance; exception.**

(1) No person shall engage in the business as, serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, wrecker or salvage dealer, auction dealer, dealer's agent, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the Motor Vehicle Industry Regulation Act. No dealer's license shall be issued to any minor. No wrecker or salvage dealer's license shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring licensing is performed and which conforms to all local laws.

(2) A license issued under the act shall authorize the holder thereof to engage in the business or activities permitted by the license subject to the act and the rules and regulations adopted and promulgated by the board under the act.

(3) This section shall not apply to a licensed real estate salesperson or broker who negotiates for sale or sells a trailer for any individual who is the owner of not more than two trailers.

(4) This section shall not restrict a licensed motor vehicle dealer from conducting an auction as provided in subsection (5) of section 60-1417.02.

**Source:** Laws 1971, LB 768, § 5; Laws 1972, LB 1335, § 2; Laws 1974, LB 754, § 3; Laws 1983, LB 234, § 20; Laws 2000, LB 1018, § 2; Laws 2003, LB 498, § 2; Laws 2010, LB816, § 56; Laws 2013, LB164, § 1; Laws 2017, LB346, § 3.

**60-1404 Executive director; duties; meetings of board; attorney; other employees; salaries; office at capitol.**

The board shall have the authority to employ an executive director who shall direct and administer the affairs of the board and who shall keep a record of all



proceedings, transactions, communications, and official acts of the board. He or she shall be custodian of all records of the board and perform such other duties as the board may require. The executive director shall call a meeting of the board at the direction of the chairperson thereof or upon a written request of two or more members thereof. The executive director, with the approval of the board, is authorized to employ an attorney at a minimum salary of six hundred dollars per month together with such other employees, including staff for its attorney, as may be necessary to properly carry out the Motor Vehicle Industry Regulation Act, to fix the salaries of such employees, and to make such other expenditures as are necessary to properly carry out the act. The office of the board shall be maintained in the State Capitol at Lincoln and all files, records, and property of the board shall at all times be and remain therein. The executive director shall be the board's representative in the administration of the act, and he or she shall insure that the policies and directives of the board are carried out.

**Source:** Laws 1957, c. 280, § 4, p. 1016; Laws 1969, c. 515, § 2, p. 2113; Laws 1974, LB 754, § 4; Laws 1984, LB 825, § 13; Laws 2010, LB816, § 57.

#### **60-1405 Attorney General; attorney for board; fees and expenses.**

The Attorney General shall render to the Nebraska Motor Vehicle Industry Licensing Board opinions on all questions of law relating to the interpretation of the Motor Vehicle Industry Regulation Act or arising in the administration thereof. The Attorney General shall act as attorney for the board in all actions and proceedings brought by or against it under or pursuant to any of the provisions of the act. All fees and expenses of the Attorney General for such duties shall be paid out of the Nebraska Motor Vehicle Industry Licensing Fund.

**Source:** Laws 1957, c. 280, § 5, p. 1016; Laws 2010, LB816, § 58.

#### **60-1406 Licenses; classes.**

Licenses issued by the board under the Motor Vehicle Industry Regulation Act shall be of the classes set out in this section and shall permit the business activities described in this section:

(1) Motor vehicle dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used motor vehicles, trailers, and manufactured homes at the established place of business designated in the license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This license permits the sale of a trade-in or consignment mobile home greater than forty feet in length and eight feet in width and located at a place other than the dealer's established place of business. This license permits one person, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motor vehicle, trailer, and manufactured home salesperson and the name of the authorized person shall appear on the license;

(2) Manufacturer license. This license permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer manufacturer or manufacturer's factory branch;

(3) Distributor license. This license permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer distributor;

(4) Factory representative license. This license permits the licensee to engage in the activities of a factory branch representative;

(5) Factory branch license. This license permits the licensee to maintain a branch office in this state;

(6) Distributor representative license. This license permits the licensee to engage in the activities of a distributor representative;

(7) Finance company license. This license permits the licensee to engage in the activities of repossession of motor vehicles or trailers and the sale of such motor vehicles or trailers so repossessed;

(8) Wrecker or salvage dealer license. This license permits the licensee to engage in the business of acquiring motor vehicles or trailers for the purpose of dismantling the motor vehicles or trailers and selling or otherwise disposing of the parts and accessories of motor vehicles or trailers;

(9) Supplemental motor vehicle, motorcycle, or trailer dealer's license. This license permits the licensee to engage in the business of selling or exchanging motor vehicles, motorcycles, or trailers of the type designated in his or her dealer's license at a specified place of business which is located more than three hundred feet from any part of the place of business designated in the original motor vehicle, motorcycle, or trailer dealer's license but which is located within the city or county described in such original license;

(10) Motorcycle dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used motorcycles at the established place of business designated in the license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motorcycle salesperson and the name of the authorized person shall appear on the license;

(11) Motor vehicle auction dealer's license. This license permits the licensee to engage in the business of selling motor vehicles and trailers. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motor vehicle auction dealer's salesperson and the name of the authorized person shall appear on the license;

(12) Trailer dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used trailers and manufactured homes at the established place of business designated in the license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a trailer and manufactured home salesperson and the name of the authorized person shall appear on the license; and

(13) Dealer's agent license. This license permits the licensee to act as the buying agent for one or more licensed motor vehicle dealers, motorcycle

dealers, or trailer dealers. The agent shall act in accordance with a written contract and file a copy of the contract with the board. The dealer shall be bound by and liable for the actions of the agent. The dealer's agent shall disclose in writing to each dealer with which the agent contracts as an agent the names of all other dealers contracting with the agent. The agent shall make each purchase on behalf of and in the name of only one dealer and may purchase for dealers only at auctions and only from licensed dealers. The agent shall not act as a licensed dealer and is not authorized to sell any vehicle pursuant to this license.

**Source:** Laws 1957, c. 280, § 6, p. 1016; Laws 1961, c. 307, § 8, p. 977; Laws 1963, c. 365, § 4, p. 1170; Laws 1967, c. 394, § 4, p. 1229; Laws 1971, LB 768, § 6; Laws 1972, LB 1335, § 3; Laws 1974, LB 754, § 5; Laws 1978, LB 248, § 5; Laws 1984, LB 825, § 14; Laws 1993, LB 121, § 389; Laws 1995, LB 564, § 4; Laws 1999, LB 632, § 1; Laws 2000, LB 1018, § 4; Laws 2003, LB 498, § 3; Laws 2010, LB816, § 59; Laws 2017, LB346, § 4.

#### **60-1407 Application for license; contents.**

Any person desiring to apply for one or more of the types of licenses described in the Motor Vehicle Industry Regulation Act shall submit to the board, in writing, the following required information:

(1) The name and address of the applicant, if the applicant is an individual, his or her social security number, and the name under which he or she intends to conduct business. If the applicant is a partnership or limited liability company, it shall set forth the name and address of each partner or member thereof and the name under which the business is to be conducted. If the applicant is a corporation, it shall set forth the name of the corporation and the name and address of each of its principal officers;

(2) The place or places, including the city or village and the street and street number, if any, where the business is to be conducted;

(3) If the application is for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license (a) the name or names of the new motor vehicle or vehicles, new trailer or trailers, or new motorcycle or motorcycles which the applicant has been enfranchised to sell or exchange, (b) the name or names and address or addresses of the manufacturer or distributor who has enfranchised the applicant, (c) a current copy of each existing franchise, and (d) a description of the community;

(4) If the application is for any of the above-named classes of dealer's licenses, the name and address of the person who is to act as a motor vehicle, trailer, or motorcycle salesperson under such license if issued;

(5) If the application is for a dealer's agent, the dealers for which the agent will be buying;

(6) A description of the proposed place or places of business proposed to be operated in the event a license is granted together with (a) a statement whether the applicant owns or leases the proposed established place of business and, if the proposed established place of business is leased, the applicant shall file a true and correct copy of the lease agreement, and (b) a description of the facilities for the display of motor vehicles, trailers, and motorcycles;

(7) If the application is for a manufacturer's license, a statement regarding the manufacturer's compliance with the Motor Vehicle Industry Regulation Act; and

(8) A statement that the licensee will comply with and be subject to the act, the rules and regulations adopted and promulgated by the board, and any amendments to the act and the rules and regulations existing on the date of application.

Subdivision (3)(d) of this section shall not be construed to require any licensee who has a franchise on August 31, 2003, to show good cause to be in the same community as any other licensee who has a franchise of the same line-make in the same community on August 31, 2003.

**Source:** Laws 1957, c. 280, § 7, p. 1017; Laws 1959, c. 286, § 9, p. 1087; Laws 1963, c. 365, § 5, p. 1172; Laws 1967, c. 394, § 5, p. 1231; Laws 1971, LB 768, § 7; Laws 1972, LB 1335, § 4; Laws 1993, LB 121, § 390; Laws 1997, LB 752, § 146; Laws 2003, LB 182, § 1; Laws 2003, LB 498, § 4; Laws 2010, LB816, § 60; Laws 2017, LB346, § 5.

**60-1407.01 License; application; filing; investigation; report; contents; requirements; revocation of license; when.**

(1) Upon the filing of any application, a staff member of the board shall endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or if no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the chairperson of the board or executive director shall refer the application to a staff member for investigation and report. The report shall include:

(a) A statement as to whether or not the applicant or any person holding any financial interest in the applicant is for any reason disqualified by the Motor Vehicle Industry Regulation Act from obtaining or exercising a license and whether or not the applicant has complied with all the requirements of the act relative to the making and filing of his or her application;

(b) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or exercise of the license applied for; and

(c) In the case of an application for a dealer's license:

(i) A description of the premises intended to become the licensed premises and of the equipment and surrounding conditions;

(ii) If the applicant has held a prior dealer's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license; and

(iii) If the applicant proposes to engage in the business of selling new motor vehicles, motorcycles, or trailers, a written statement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or such other evidence as prescribed by the board, that the applicant is authorized to sell or distribute such new motor vehicles, motorcycles, or trailers.

(2) After the filing of the report, the board may interview the applicant. Notice of such interview shall be given at least ten days prior to the interview.

(3) The executive director shall not issue or renew a license if the applicant or licensee does not (a) maintain an established place of business, (b) meet the requirement for a bond pursuant to section 60-1419, (c) present a certificate or policy of insurance written by an insurance carrier duly authorized to do business in this state which gives the effective dates of coverage indicating that it is in force, which covers the fleet of motor vehicles owned by the applicant or licensee in the ordinary course of business, and which provides liability coverage as described in sections 60-534 and 60-538, (d) present evidence of compliance with the insurance requirements of the Nebraska Workers' Compensation Act, and (e) meet requirements for licensure and comply with the Motor Vehicle Industry Regulation Act, the rules and regulations adopted and promulgated by the board, and any amendments to the act and the rules and regulations. The executive director shall refuse to renew a motor vehicle dealer's license if the dealer cannot prove that he or she sold at least five motor vehicles during the previous licensing period. The requirement under subdivision (c) of this subsection for a certificate or policy of insurance shall not apply to trailer dealers.

(4) The board shall revoke the license of any licensee if, after December 31, 1991, it comes to the attention of the board that the policy of motor vehicle liability coverage required under subdivision (3)(c) of this section is no longer in force.

(5) Nothing in this section shall be construed to change any existing liability or to create any new liability.

**Source:** Laws 1971, LB 768, § 8; Laws 1984, LB 825, § 15; Laws 1989, LB 280, § 2; Laws 1991, LB 171, § 1; Laws 1999, LB 632, § 2; Laws 2010, LB816, § 61.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**60-1407.02 Sales tax permit; authorized use; violations; penalty.**

It shall be unlawful for any person holding a Nebraska sales tax permit, except a dealer licensed pursuant to the Motor Vehicle Industry Regulation Act, to sell or offer for sale any motor vehicle, motorcycle, or trailer, not owned by such person, on the premises covered by such sales tax permit. Any person violating this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1972, LB 1335, § 15; Laws 1977, LB 39, § 93; Laws 2010, LB816, § 62.

**60-1407.03 Special permit for sale at other than established place of business; issuance.**

Notwithstanding the other provisions of the Motor Vehicle Industry Regulation Act restricting sales to an established place of business, any motor vehicle, motorcycle, or trailer dealer licensed in accordance with the act may be granted a special permit to display and sell passenger cars, motor vehicles, motorcycles, trailers, or self-propelled motor homes at fairs, sports shows,

vacation shows, and similar events, subject to the conditions established by sections 60-1407.02 to 60-1407.04.

**Source:** Laws 1972, LB 1335, § 16; Laws 1974, LB 754, § 6; Laws 1981, LB 361, § 2; Laws 2000, LB 1018, § 5; Laws 2010, LB816, § 63.

**60-1407.04 Special permit for sale at other than established place of business; approval; conditions.**

The event for which a permit is sought under section 60-1407.03 must be approved by the board. In determining approval, the board shall consider the size, location, duration, sponsors, and purpose of the event. Approval shall not be given to any event sponsored solely by a dealer or dealers or for which the sole or primary purpose is the sale of motor vehicles, motorcycles, trailers, or self-propelled mobile homes.

**Source:** Laws 1972, LB 1335, § 17; Laws 2010, LB816, § 64.

**60-1407.05 Repealed. Laws 2000, LB 1018, § 10.**

**60-1407.06 Special permit for sale at other than established place of business; rules and regulations; fee.**

The board may adopt rules and regulations establishing procedures for the issuance of such special permits. The fee for each such special permit shall be not more than the same fee as established for a dealer's license pursuant to section 60-1411.01.

**Source:** Laws 1972, LB 1335, § 19; Laws 1974, LB 754, § 7.

**60-1408 Repealed. Laws 1971, LB 768, § 40.**

**60-1409 Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.**

The Nebraska Motor Vehicle Industry Licensing Fund is created. All fees collected under the Motor Vehicle Industry Regulation Act shall be remitted by the board, as collected, to the State Treasurer for credit to the fund. Such fund shall be appropriated by the Legislature for the operations of the Nebraska Motor Vehicle Industry Licensing Board and shall be paid out from time to time by warrants of the Director of Administrative Services on the State Treasurer for authorized expenditures upon duly itemized vouchers executed as provided by law and approved by the chairperson of the board or the executive secretary, except that transfers from the fund to the General Fund may be made at the direction of the Legislature through June 30, 2018. The expenses of conducting the office must always be kept within the income collected and reported to the State Treasurer by such board. Such office and expense thereof shall not be supported or paid from the General Fund, and all money deposited in the Nebraska Motor Vehicle Industry Licensing Fund shall be expended only for such office and expense thereof and, unless determined by the board, it shall not be required to expend any funds to any person or any other governmental agency.

Any money in the Nebraska Motor Vehicle Industry Licensing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The fund shall be audited by the Auditor of Public Accounts at such time as he or she determines necessary.

The State Treasurer shall transfer five hundred thousand dollars from the Nebraska Motor Vehicle Industry Licensing Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 1957, c. 280, § 9, p. 1019; Laws 1969, c. 584, § 60, p. 2382; Laws 1972, LB 1335, § 5; Laws 1974, LB 754, § 8; Laws 1978, LB 248, § 6; Laws 1995, LB 7, § 63; Laws 2002, LB 1310, § 6; Laws 2009, First Spec. Sess., LB3, § 36; Laws 2010, LB816, § 65; Laws 2011, LB337, § 3; Laws 2017, LB331, § 29.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **60-1410 License; form; display; pocket card.**

The board shall prescribe the form of the license and each license shall have printed thereon the seal of its office. All licenses shall be mailed to each licensee. It shall be the duty of each dealer to conspicuously display his or her own license or licenses in his or her place or places of business.

The board shall prepare and deliver a pocket card for dealer's agents, factory representatives, and distributor representatives. Such card shall certify that the person whose name appears thereon is a licensed dealer's agent, factory representative, or distributor representative, as the case may be.

**Source:** Laws 1957, c. 280, § 10, p. 1019; Laws 1963, c. 365, § 7, p. 1173; Laws 1971, LB 768, § 9; Laws 1972, LB 1335, § 6; Laws 2003, LB 498, § 5; Laws 2017, LB346, § 6.

#### **60-1411 Notice of changes; return of pocket card; required when.**

If a motor vehicle dealer, motorcycle dealer, or trailer dealer changes the address of his or her place of business, changes franchise, adds another franchise, or loses a franchise for sale of new motor vehicles, motorcycles, or trailers, the dealer shall notify the board of such change within ten days prior to such change. Thereupon the license shall be corrected for the unexpired portion of the term at no additional fee except as provided in section 60-1411.01.

If a dealer's agent changes his or her agent's status with any dealer, the agent shall notify the board. If the agent is no longer contracting with any dealer, the dealer's agent license shall lapse and the license and pocket card shall be returned to the board.

**Source:** Laws 1957, c. 280, § 11, p. 1020; Laws 1963, c. 365, § 8, p. 1174; Laws 1971, LB 768, § 10; Laws 1972, LB 1335, § 7; Laws 2003, LB 498, § 6; Laws 2017, LB346, § 7.

#### **60-1411.01 Administration and enforcement expenses; how paid; fees; licenses; expiration.**

(1) To pay the expenses of the administration, operation, maintenance, and enforcement of the Motor Vehicle Industry Regulation Act, the board shall

collect with each application for each class of license fees not exceeding the following amounts:

- (a) Motor vehicle dealer's license, four hundred dollars;
- (b) Supplemental motor vehicle dealer's license, twenty dollars;
- (c) Dealer's agent license, one hundred dollars;
- (d) Motor vehicle, motorcycle, or trailer manufacturer's license, six hundred dollars;
- (e) Distributor's license, six hundred dollars;
- (f) Factory representative's license, twenty dollars;
- (g) Distributor representative's license, twenty dollars;
- (h) Finance company's license, four hundred dollars;
- (i) Wrecker or salvage dealer's license, two hundred dollars;
- (j) Factory branch license, two hundred dollars;
- (k) Motorcycle dealer's license, four hundred dollars;
- (l) Motor vehicle auction dealer's license, four hundred dollars; and
- (m) Trailer dealer's license, four hundred dollars.

(2) The fees shall be fixed by the board and shall not exceed the amount actually necessary to sustain the administration, operation, maintenance, and enforcement of the act.

(3) Such licenses, if issued, shall expire on December 31 next following the date of the issuance thereof. Any motor vehicle, motorcycle, or trailer dealer changing its location shall not be required to obtain a new license if the new location is within the same city limits or county, all requirements of law are complied with, and a fee of twenty-five dollars is paid, but any change of ownership of any licensee shall require a new application for a license and a new license. Change of name of licensee without change of ownership shall require the licensee to obtain a new license and pay a fee of five dollars. Applications shall be made each year for a new or renewal license. If the applicant is an individual, the application shall include the applicant's social security number.

**Source:** Laws 1971, LB 768, § 11; Laws 1972, LB 1335, § 8; Laws 1974, LB 754, § 9; Laws 1978, LB 248, § 7; Laws 1984, LB 825, § 16; Laws 1997, LB 752, § 147; Laws 1998, LB 903, § 4; Laws 1999, LB 632, § 3; Laws 2003, LB 498, § 7; Laws 2007, LB681, § 1; Laws 2010, LB816, § 66; Laws 2017, LB346, § 8.

**60-1411.02 Investigation; denial of application; revocation or suspension of license; probation; administrative fine; grounds.**

The board may, upon its own motion, and shall, upon a sworn complaint in writing of any person, investigate the actions of any person acting, registered, or licensed under the Motor Vehicle Industry Regulation Act as a motor vehicle dealer, trailer dealer, dealer's agent, manufacturer, factory branch, distributor, factory representative, distributor representative, supplemental motor vehicle dealer, wrecker or salvage dealer, finance company, motorcycle dealer, or motor vehicle auction dealer or operating without a registration or license when such registration or license is required. The board may deny any application for a license, may revoke or suspend a license, may place the licensee or



registrant on probation, may assess an administrative fine in an amount not to exceed five thousand dollars per violation, or may take any combination of such actions if the violator, applicant, registrant, or licensee including any officer, stockholder, partner, or limited liability company member or any person having any financial interest in the violator, applicant, registrant, or licensee:

(1) Has had any license issued under the act revoked or suspended and, if the license has been suspended, has not complied with the terms of suspension;

(2) Has knowingly purchased, sold, or done business in stolen motor vehicles, motorcycles, or trailers or parts therefor;

(3) Has failed to provide and maintain an established place of business;

(4) Has been found guilty of any felony which has not been pardoned, has been found guilty of any misdemeanor concerning fraud or conversion, or has suffered any judgment in any civil action involving fraud, misrepresentation, or conversion. In the event felony charges are pending against an applicant, the board may refuse to issue a license to the applicant until there has been a final determination of the charges;

(5) Has made a false material statement in his or her application or any data attached to the application or to any investigator or employee of the board;

(6) Has willfully failed to perform any written agreement with any consumer or retail buyer;

(7) Has made a fraudulent sale, transaction, or repossession, or created a fraudulent security interest as defined in the Uniform Commercial Code, in a motor vehicle, trailer, or motorcycle;

(8) Has failed to notify the board of a change in the location of his or her established place or places of business;

(9) Has willfully failed to deliver to a purchaser a proper certificate of ownership for a motor vehicle, trailer, or motorcycle sold by the licensee or to refund the full purchase price if the purchaser cannot legally obtain proper certification of ownership within thirty days;

(10) Has forged the signature of the registered or legal owner on a certificate of title;

(11) Has failed to comply with the act and any orders, rules, or regulations of the board adopted and promulgated under the act;

(12) Has failed to comply with the advertising and selling standards established in section 60-1411.03;

(13) Has failed to comply with any provisions of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Industry Regulation Act, the Motor Vehicle Registration Act, or the rules or regulations adopted and promulgated by the board pursuant to the Motor Vehicle Industry Regulation Act;

(14) Has failed to comply with any provision of Chapter 71, article 46, or with any code, standard, rule, or regulation adopted or made under the authority of or pursuant to Chapter 71, article 46;

(15) Has willfully defrauded any retail buyer or other person in the conduct of the licensee's business;

(16) Has failed to comply with sections 60-190 to 60-196;

(17) Has engaged in any unfair methods of competition or unfair or deceptive acts or practices prohibited under the Uniform Deceptive Trade Practices Act;

(18) Has conspired, as defined in section 28-202, with other persons to process certificates of title in violation of the Motor Vehicle Certificate of Title Act; or

(19) Has violated the Guaranteed Asset Protection Waiver Act.

If the violator, applicant, registrant, or licensee is a publicly held corporation, the board's authority shall extend only to the corporation and its managing officers and directors.

**Source:** Laws 1971, LB 768, § 12; Laws 1972, LB 1335, § 9; Laws 1974, LB 754, § 10; Laws 1978, LB 248, § 8; Laws 1980, LB 820, § 2; Laws 1984, LB 825, § 17; Laws 1991, LB 47, § 6; Laws 1993, LB 106, § 1; Laws 1993, LB 121, § 391; Laws 1993, LB 370, § 472; Laws 1994, LB 884, § 82; Laws 1995, LB 564, § 5; Laws 1999, LB 632, § 4; Laws 2003, LB 498, § 8; Laws 2005, LB 274, § 257; Laws 2005, LB 276, § 106; Laws 2010, LB571, § 12; Laws 2010, LB816, § 67; Laws 2017, LB346, § 9.

#### Cross References

**Guaranteed Asset Protection Waiver Act**, see section 45-1101.

**Motor Vehicle Certificate of Title Act**, see section 60-101.

**Motor Vehicle Registration Act**, see section 60-301.

**Uniform Deceptive Trade Practices Act**, see section 87-306.

The Nebraska Motor Vehicle Industry Licensing Board has authority only to impose the sanctions authorized by statute and no other sanctions. *Chrysler Corp. v. Lee Janssen Motor Co.*, 248 Neb. 281, 534 N.W.2d 568 (1995).

#### 60-1411.03 Unauthorized acts.

It shall be unlawful for any licensee or motor vehicle dealer to engage, directly or indirectly, in the following acts:

(1) To advertise and offer any year, make, engine size, model, type, equipment, price, trade-in allowance, or terms or make other claims or conditions pertaining to the sale, leasing, or rental of motor vehicles, motorcycles, and trailers which are not truthful and clearly set forth;

(2) To advertise for sale, lease, or rental a specific motor vehicle, motorcycle, or trailer which is not in the possession of the dealer, owner, or advertiser and willingly shown and sold, as advertised, illustrated, or described, at the advertised price and terms, at the advertised address. Unless otherwise specified, a motor vehicle, motorcycle, or trailer advertised for sale shall be in operable condition and, on request, the advertiser thereof shall show records to substantiate an advertised offer;

(3) To advertise a new motor vehicle, motorcycle, or trailer at a price which does not include standard equipment with which it is fitted or is ordinarily fitted, without disclosing such fact, or eliminating any such equipment for the purpose of advertising a low price;

(4) To advertise (a) that the advertiser's prices are always or generally lower than competitive prices and not met or equalled by others or that the advertiser always or generally undersells competitors, (b) that the advertiser's prices are always or generally the lowest or that no other dealer has lower prices, (c) that the advertiser is never undersold, or (d) that no other advertiser or dealer will have a lower price;

(5) To advertise and make statements such as, Write Your Own Deal, Name Your Own Price, or Name Your Own Monthly Payments and other statements of a similar nature;

(6) To advertise by making disparaging comparisons with competitors' services, quality, price, products, or business methods;

(7) To advertise by making the layout, headlines, illustrations, and type size of an advertisement so as to convey or permit an erroneous impression as to which motor vehicle, motorcycle, or trailer or motor vehicles, motorcycles, or trailers are offered at featured prices. No advertised offer, expression, or display of price, terms, downpayment, trade-in allowance, cash difference, or savings shall be misleading by itself, and any qualification to such offer, expression, or display shall be clearly and conspicuously set forth in comparative type size and style, location, and layout to prevent deception;

(8) To advertise the price of a motor vehicle, motorcycle, or trailer without including all charges which the customer must pay for the motor vehicle, motorcycle, or trailer, excepting state and local taxes and license, title, and other fees. It shall be unlawful to advertise prices described as unpaid balance unless they are the full cash selling price and to advertise price which is not the full selling price even though qualified with expressions such as with trade, with acceptable trade, or other similar words;

(9) To advertise as at cost, below cost, below invoice, or wholesale, unless the term used is strictly construed that the word cost as used in this subdivision or in a similar meaning is the actual price paid by the advertiser to the manufacturer for the motor vehicle, motorcycle, or trailer so advertised;

(10) To advertise claims that Everybody Financed, No Credit Rejected, or We Finance Anyone and other similar affirmative statements;

(11) To advertise a specific trade-in amount or range of amounts;

(12) To advertise the words Finance, Loan, or Discounts or others of similar import in the firm name or trade style of a person offering motor vehicles, motorcycles, and trailers for sale unless such person is actually engaged in the finance business and offering only bona fide repossessed motor vehicles, motorcycles, and trailers. It shall be unlawful to use the word Repossessed in the name or trade style of a firm in the advertising of motor vehicles, motorcycles, and trailers sold by such a company unless they are bona fide repossessions sold for unpaid balances due only. Advertisers offering repossessed automobiles for sale shall be able to offer proof of repossession;

(13) To advertise the term Authorized Dealer in any way as to mislead as to the make or makes of motor vehicles, motorcycles, or trailers for which a dealer is franchised to sell at retail;

(14) To advertise or sell new motor vehicles, motorcycles, and trailers by any person not enfranchised by the manufacturer of the motor vehicle, motorcycle, or trailer offered without disclosing the fact in each advertisement which includes the motor vehicle, motorcycle, or trailer, and in writing in the lease or purchase agreement that the licensee or motor vehicle dealer is not enfranchised by the manufacturer for service under factory warranty provisions. No person shall transfer ownership of a motor vehicle by reassignment on a manufacturer's statement of origin unless the person is enfranchised to do so by the manufacturer of the motor vehicle;

(15) To advertise used motor vehicles, motorcycles, or trailers so as to create the impression that they are new. Used motor vehicles, motorcycles, and trailers of the current and preceding model year shall be clearly identified as Used, Executive Driven, Demonstrator, or Driver Training, and lease cars,

taxicabs, fleet vehicles, police motor vehicles, or motorcycles as may be the case and descriptions such as Low Mileage or Slightly Driven may also be applied only when correct. The terms demonstrator's, executive's, and official's motor vehicles, motorcycles, or trailers shall not be used unless (a) they have never been sold to a member of the public, (b) such terms describe motor vehicles, motorcycles, or trailers used by new motor vehicle, motorcycle, or trailer dealers or their employees for demonstrating performance ability, and (c) such vehicles are advertised for sale as such only by an authorized dealer in the same make of motor vehicle, motorcycle, or trailer. Phrases such as Last of the Remaining, Closeout, or Final Clearance and others of similar import shall not be used in advertising used motor vehicles, motorcycles, and trailers so as to convey the impression that the motor vehicles, motorcycles, and trailers offered are holdover new motor vehicles, motorcycles, and trailers. When new and used motor vehicles, motorcycles, and trailers of the current and preceding model year are offered in the same advertisement, such offers shall be clearly separated by description, layout, and art treatment;

(16) To advertise executives' or officials' motor vehicles, motorcycles, or trailers unless they have been used exclusively by the personnel or executive of the motor vehicle, motorcycle, or trailer manufacturer or by an executive of any authorized dealer of the same make thereof and such motor vehicles, motorcycles, and trailers have not been sold to a member of the public prior to the appearance of the advertisement;

(17) To advertise motor vehicles, motorcycles, and trailers owned by or in the possession of dealers without the name of the dealership or in any other manner so as to convey the impression that they are being offered by private parties;

(18) To advertise the term wholesale in connection with the retail offering of used motor vehicles, motorcycles, and trailers;

(19) To advertise the terms auction or auction special and other terms of similar import unless such terms are used in connection with motor vehicles, motorcycles, and trailers offered or sold at a bona fide auction to the highest bidder and under such other specific conditions as may be required in the Motor Vehicle Industry Regulation Act;

(20) To advertise free driving trial unless it means a trial without obligation of any kind and that the motor vehicle, motorcycle, or trailer may be returned in the period specified without obligation or cost. A driving trial advertised on a money back basis or with privilege of exchange or applying money paid on another motor vehicle, motorcycle, or trailer shall be so explained. Terms and conditions of driving trials, free or otherwise, shall be set forth in writing for the customer;

(21) To advertise (a) the term Manufacturer's Warranty unless it is used in advertising only in reference to cars covered by a bona fide factory warranty for that particular make of motor vehicle, motorcycle, or trailer. In the event only a portion of such warranty is remaining, then reference to a warranty may be used only if stated that that unused portion of the warranty is still in effect, (b) the term New Car Guarantee except in connection with new motor vehicles, motorcycles, and trailers, and (c) the terms Ninety-day Warranty, Fifty-fifty Guarantee, Three-hundred-mile Guarantee, and Six-month Warranty, unless the major terms and exclusions are sufficiently described in the advertisement;

(22) To advertise representations inconsistent with or contrary to the fact that a motor vehicle, motorcycle, or trailer is sold as is and without a guarantee. The customer contract shall clearly indicate when a car will be sold with a guarantee and what that guarantee is and similarly shall clearly indicate when a car is sold as is and without a guarantee; and

(23) To advertise or to make any statement, declaration, or representation in any advertisement that cannot be substantiated in fact, and the burden of proof of the factual basis for the statement, declaration, or representation shall be on the licensee or motor vehicle dealer and not on the board.

**Source:** Laws 1971, LB 768, § 13; Laws 1972, LB 1335, § 10; Laws 1974, LB 754, § 11; Laws 1980, LB 820, § 3; Laws 1984, LB 825, § 18; Laws 1989, LB 280, § 3; Laws 1995, LB 564, § 6; Laws 1997, LB 271, § 33; Laws 2010, LB816, § 68.

#### **60-1411.04 Advertising; violations; penalty.**

The use, employment, or publication of advertising by any licensee or motor vehicle dealer which does not comply with section 60-1411.03 is hereby declared to be an unlawful act, and any person violating such section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1971, LB 768, § 14; Laws 1972, LB 1335, § 11; Laws 1977, LB 39, § 94; Laws 1989, LB 280, § 4.

#### **60-1412 Repealed. Laws 1971, LB 768, § 40.**

#### **60-1413 Disciplinary actions; procedure.**

(1) Before the board denies any license or any registration as described in section 60-1417.02, revokes or suspends any such license or registration, places a licensee or registrant on probation, or assesses an administrative fine under section 60-1411.02, the board shall give the applicant, licensee, registrant, or violator a hearing on the matter unless the hearing is waived upon agreement between the applicant, licensee, registrant, or violator and the executive director, with the approval of the board. As a condition of the waiver, the applicant, licensee, registrant, or violator shall accept the fine or other administrative action. If the hearing is not waived, the board shall, at least thirty days prior to the date set for the hearing, notify the party in writing. Such notice in writing shall contain an exact statement of the charges against the party and the date and place of hearing. The party shall have full authority to be heard in person or by counsel before the board in reference to the charges. The written notice may be served by delivery personally to the party or by mailing the notice by registered or certified mail to the last-known business address of the party. If the applicant is a dealer's agent, the board shall also notify the dealer employing or contracting with him or her or whose employ he or she seeks to enter by mailing the notice to the dealer's last-known business address. A stenographic record of all testimony presented at the hearings shall be made and preserved pending final disposition of the complaint.

(2) When the licensee fails to maintain a bond as provided in section 60-1419, an established place of business, or liability insurance as prescribed by subsection (3) of section 60-1407.01, the license shall immediately expire. The executive director shall notify the licensee personally or by mailing the notice by registered or certified mail to the last-known address of the licensee that his or

her license is revoked until a bond as required by section 60-1419 or liability insurance as prescribed by subsection (3) of section 60-1407.01 is furnished and approved in which event the license may be reinstated.

(3) Upon notice of the revocation or suspension of the license, the licensee shall immediately surrender the expired license to the executive director or his or her representative. If the license is suspended, the executive director or his or her representative shall return the license to the licensee at the time of the conclusion of the period of suspension. Failure to surrender the license as required in this section shall subject the licensee to the penalties provided in section 60-1416.

**Source:** Laws 1957, c. 280, § 13, p. 1022; Laws 1963, c. 365, § 10, p. 1177; Laws 1967, c. 394, § 8, p. 1235; Laws 1971, LB 768, § 15; Laws 1978, LB 248, § 9; Laws 1984, LB 825, § 23; Laws 1993, LB 106, § 2; Laws 1995, LB 564, § 7; Laws 1999, LB 632, § 5; Laws 2003, LB 498, § 9; Laws 2017, LB346, § 10.

**60-1414 Denial, revocation, or suspension of license or registration; hearing; attendance of witness; production of books and papers; effect.**

In the preparation and conduct of such hearings, the members of the board and executive director shall have the power to require the attendance and testimony of any witness and the production of any papers or documents in order to assure a fair trial. They may sign and issue subpoenas therefor and administer oaths and examine witnesses and take any evidence they deem pertinent to the determination of the charges. Any witnesses so subpoenaed shall be entitled to the same fees as prescribed by law in judicial proceedings in the district court of this state in a civil action and mileage at the same rate provided in section 81-1176 for state employees. The payment of such fees and mileage must be out of and kept within the limits of the funds provided for the administration of the board. The party against whom such charges may be filed shall have the right to obtain from the executive director a subpoena for any witnesses which he or she may desire at such hearing and depositions may be taken as in civil court cases in the district court. Any information obtained from the books and records of the person complained against may not be used against the person complained against as the basis for a criminal prosecution under the laws of this state.

**Source:** Laws 1957, c. 280, § 14, p. 1022; Laws 1971, LB 768, § 16; Laws 1981, LB 204, § 101; Laws 1984, LB 825, § 24.

**60-1415 Disciplinary actions; findings of board; order; restitution; appeal; distribution of fines.**

(1) The board shall state in writing, officially signed by the chairperson or vice-chairperson and the executive director, its findings and determination after such hearing and its order in the matter. If the board determines and orders that an applicant is not qualified to receive a license or registration, no license or registration shall be granted. If the board determines that the party has willfully or through undue negligence been guilty of any violation of the Motor Vehicle Industry Regulation Act or any rule or regulation adopted and promulgated by the board under authority of the act, the board may suspend or revoke the license or registration, place the party on probation, assess an administrative fine, or take any combination of such actions. In determining the amount

of the fine, the board may consider the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and any attempt made by the party to retaliate against another party for seeking relief pursuant to the laws, rules, or regulations relating to motor vehicle industry licensing. The board may also, after hearing, assess an additional administrative fine in an amount not to exceed five thousand dollars for each day a violation continues if a party fails to obey a direct order of the board or repeats the same violation within forty-eight months of the previous violation. The imposition of any such additional administrative fine shall commence one month after the initial order of the board or any final order on appeal if taken for failure to obey a direct order of the board and on the date of the second or subsequent violation for repeat violations within forty-eight months. The board may make a demand on a violator for restitution to a harmed consumer. The party may appeal the decision of the board. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The board shall remit administrative fines to the State Treasurer on a monthly basis for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Any administrative fine imposed under this section and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property.

**Source:** Laws 1957, c. 280, § 15, p. 1023; Laws 1963, c. 365, § 11, p. 1178; Laws 1967, c. 394, § 9, p. 1236; Laws 1971, LB 768, § 17; Laws 1972, LB 1335, § 12; Laws 1974, LB 754, § 12; Laws 1978, LB 248, § 10; Laws 1984, LB 825, § 25; Laws 1988, LB 352, § 107; Laws 1993, LB 106, § 3; Laws 2010, LB816, § 69.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

A motor vehicle dealer is not a consumer within the meaning of this section, and therefore, a dealer may not be granted restitution under the authority of this section. *Chrysler Corp. v. Lee Janssen Motor Co.*, 248 Neb. 281, 534 N.W.2d 568 (1995).

The failure of the Nebraska Motor Vehicle Industry Licensing Board to make a specific determination of undue negligence or willfulness is not fatal if the court finds, after a de novo review, the record supports such a finding. *Park Place Pontiac v. Neb.*

*Motor Vehicle Ind. Lic. Bd.*, 232 Neb. 273, 440 N.W.2d 445 (1989).

In order to perfect an appeal from an order of the Nebraska Motor Vehicle Industry Licensing Board, an appeal bond must be filed with the board within ten days of the rendition of the order. *Kizzier Chevrolet Co. v. General Motors Corp.*, 219 Neb. 319, 363 N.W.2d 167 (1985).

#### 60-1415.01 Restraining order.

Whenever the board shall believe from evidence satisfactory to it that any person has violated or is violating any provisions of the Motor Vehicle Industry Regulation Act, the board may, in addition to any other remedy, bring an action in the name and on behalf of the State of Nebraska against such person and any other person concerned in or in any way participating in or about to participate in practices or acts in violation of the act to enjoin such person and such other person from continuing the same. In any such action, the board may apply for and on due showing be entitled to have issued the court's subpoena, requiring forthwith the appearance of any defendant and the defendant's agent and employees and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct of practices or things complained of in such application for injunction. In such action an order or judgment may be entered awarding such preliminary or final injunctions as may be proper.

**Source:** Laws 1971, LB 768, § 18; Laws 2010, LB816, § 70.

**60-1416 Acting without license; penalty.**

Any person acting as a motor vehicle dealer, trailer dealer, wrecker or salvage dealer, motorcycle dealer, auction dealer, dealer's agent, manufacturer, factory representative, distributor, or distributor representative without having first obtained the license provided in section 60-1406 is guilty of a Class IV felony and is subject to the civil penalty provisions of section 60-1411.02.

**Source:** Laws 1957, c. 280, § 16, p. 1023; Laws 1963, c. 365, § 12, p. 1178; Laws 1971, LB 768, § 19; Laws 1974, LB 754, § 13; Laws 1977, LB 39, § 95; Laws 1984, LB 825, § 26; Laws 1989, LB 47, § 1; Laws 1995, LB 564, § 8; Laws 2003, LB 498, § 10; Laws 2017, LB346, § 11.

Mens rea is not required to convict a person for acting without a license under this section because the offense is a public welfare offense. *State v. Merchant*, 285 Neb. 456, 827 N.W.2d 473 (2013).

**60-1417 Vehicle sale; instrument in writing; contents; copy of instruments and odometer statements retained by dealer; out-of-state sale; requirements.**

Every motor vehicle, motorcycle, or trailer sale, except between a manufacturer or distributor, shall be evidenced by an instrument in writing upon a form that may be adopted and promulgated by the board and approved by the Attorney General which shall contain all the agreements of the parties and shall be signed by the buyer and seller or a duly acknowledged agent of the seller. Prior to or concurrent with any such motor vehicle, motorcycle, or trailer sale, the seller shall deliver to the buyer written documentation which shall contain the following information:

- (1) Name of seller;
- (2) Name of buyer;
- (3) Year of model and identification number;
- (4) Cash sale price;
- (5) Year and model of trailer and serial number, if any;
- (6) The amount of buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of any goods traded in;
- (7) The difference between subdivisions (4) and (6) of this section;
- (8) The amount included for insurance if a separate charge is made for insurance, specifying the types of coverages;
- (9) If the sale is an installment sale:
  - (a) The basic time price, which is the sum of subdivisions (7) and (8) of this section;
  - (b) The time-price differential;
  - (c) The amount of the time-price balance, which is the sum of subdivisions (a) and (b) of this subdivision, payable in installments by the buyer to the seller;
  - (d) The number, amount, and due date or period of each installment payment; and
  - (e) The time-sales price;
- (10) Whether the sale is as is or subject to warranty and, if subject to warranty, specifying the warranty; and



(11) If repairs or inspections arising out of the conduct of a dealer's business cannot be provided by the dealer in any representations or warranties that may arise, the instrument shall so state that fact and shall provide the purchaser with the location of a facility where such repairs or inspections, as provided for in the service contract, can be accomplished.

A copy of all such instruments and written documentation shall be retained in the file of the dealer for five years from the date of sale. The dealer shall keep a copy of the odometer statement required by section 60-192 which is furnished to him or her for each motor vehicle the dealer purchases or sells. The dealer shall keep such statements for five years from the date of the transaction as shown on the odometer statement.

If a transaction for the sale of a new motor vehicle which does not take place in the State of Nebraska provides for delivery in Nebraska, delivery in Nebraska shall only be made through a motor vehicle dealer licensed and bonded in Nebraska. The motor vehicle dealer may charge the seller for such service but shall not charge the purchaser. The motor vehicle dealer shall be jointly and severally liable for compliance with all applicable laws and contracts with the seller. If the dealer is not a franchisee of the manufacturer or distributor of the line-make of the vehicle, the dealer shall notify the purchaser in writing that the dealer is jointly and severally liable with the seller for compliance with all applicable laws and contracts with the seller and that the dealer is not authorized to provide repairs or inspections pursuant to the manufacturer's warranty.

**Source:** Laws 1945, c. 143, § 9, p. 463; Laws 1953, c. 207, § 13, p. 730; Laws 1955, c. 243, § 7, p. 767; R.R.S.1943, § 60-617; Laws 1963, c. 365, § 13, p. 1179; Laws 1967, c. 394, § 10, p. 1237; Laws 1971, LB 768, § 36; Laws 1974, LB 754, § 14; Laws 1978, LB 248, § 11; Laws 1984, LB 825, § 27; Laws 1993, LB 370, § 473; Laws 1995, LB 564, § 9; Laws 2000, LB 1018, § 6; Laws 2005, LB 276, § 107.

Where an agent wrongfully sells automobiles belonging to the principal, the principal is not liable to the buyers for failing to complete the required buyer and seller forms. *Wolfson Car Leasing Co., Inc. v. Weberg*, 200 Neb. 420, 264 N.W.2d 178 (1978).

An agreement which fully complied with the provisions of section 60-1417, R.S.Supp.,1967, constituted a valid agreement of sale and excluded insurance coverage of transferor of automobile. *Dyas v. Morris*, 194 Neb. 773, 235 N.W.2d 636 (1975).

**60-1417.01 Auction dealer; records; requirements; sale on consignment; title; exception.**

(1)(a) Each auction dealer shall establish and retain at the primary place of business a record of the following information for each motor vehicle or trailer coming into his or her possession as an auction dealer: (i) The name of the most recent owner, other than the auction dealer; (ii) the name of the buyer; (iii) the vehicle identification number; (iv) the odometer reading on the date on which the auction dealer took possession of the motor vehicle or trailer; and (v) a bill of sale or other transaction document signed by the seller or the seller's agent and the buyer or the buyer's agent.

(b) The dealer shall maintain the information in a manner that permits systematic retrieval for five years following the date of sale of each vehicle or trailer. The information may be maintained in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

(c) The auction dealer shall be responsible for insuring that the information required in subdivisions (1)(a)(i), (iii), and (iv) of this section is available to all

prospective buyers at the time a vehicle or trailer is offered for sale at auction and shall give the bill of sale or other transaction document required in subdivision (1)(a)(v) of this section to the buyer purchasing the vehicle or trailer at auction.

(2) When any dealer, except an auction dealer selling at auction, sells any unit on consignment, he or she shall take title to such unit in his or her own name, except that any dealer or other person, other than the owner of a used mobile home, selling a used mobile home shall not be required to take title but shall complete a buyer's information form approved by the board. The seller of the used mobile home shall be responsible for insuring that a copy of the form is delivered to the buyer prior to closing the sale of the used mobile home. The form shall include the (a) name and address of the record owner of the mobile home, (b) model, (c) year, and (d) serial number.

**Source:** Laws 1974, LB 754, § 16; Laws 1983, LB 234, § 21; Laws 1984, LB 825, § 28; Laws 1991, LB 333, § 3; Laws 1999, LB 340, § 1; Laws 2002, LB 1105, § 466.

#### **60-1417.02 Auction; registration of seller; exception.**

(1) Except as otherwise provided in subsection (5) of this section, any person who engages in or attempts to engage in the selling of motor vehicles or trailers at an auction licensed pursuant to the Motor Vehicle Industry Regulation Act shall register to do so. Registration shall be made on a form provided by the auction dealer and approved by the board. A copy of the registration shall serve as proof of registration for the calendar year. The registration information shall be made available and accessible to the board by the auction dealer within seventy-two hours after the registrant has met the registration requirements and such registration is issued. Such registration information shall be maintained and made accessible to the board by the auction dealer for two years. It shall be the duty of the auction dealer to ensure that no seller participates in any sales activities until and unless registration has been received by the auction dealer or unless such seller is otherwise licensed under the act.

(2) The information required on the registration form shall include, but not be limited to, the following: (a) The legal name of the registrant; (b) the registrant's current mailing address and telephone number; (c) the business name and address of the person with whom the registrant is associated; and (d) whether or not the registrant is bonded.

(3) The registration form shall be signed by the registrant and an authorized representative of the auction and shall be notarized by a notary public.

(4) Any person who is convicted of any violation of the act pursuant to section 60-1411.02 may be denied the right to be registered at all licensed auctions of this state following a hearing before the board as prescribed in section 60-1413.

(5) A licensed motor vehicle dealer may conduct an auction of excess inventory of used vehicles without being licensed as an auction dealer or registered under this section if the auction conforms to the requirements of this subsection. The licensed motor vehicle dealer shall conduct the auction upon the licensed premises of the dealer, shall sell only used motor vehicles, trailers, or manufactured homes, shall sell only to motor vehicle dealers licensed in

Nebraska, shall not sell any vehicles on consignment, and shall not sell any vehicles directly to the public.

**Source:** Laws 1984, LB 825, § 29; Laws 1999, LB 340, § 2; Laws 2010, LB816, § 71; Laws 2013, LB164, § 2.

**60-1418 Motor vehicle sale; violation; penalty.**

Any person guilty of violating any of the provisions of section 60-1417 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1945, c. 143, § 10, p. 463; R.R.S.1943, § 60-618; Laws 1963, c. 365, § 14, p. 1179; Laws 1971, LB 768, § 37; Laws 1977, LB 39, § 96.

**60-1419 Dealer's licenses; bond; conditions.**

(1) Applicants for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license shall furnish, at the time of making application, a corporate surety bond in the penal sum of fifty thousand dollars.

(2) Applicants for a motor vehicle auction dealer's license shall, at the time of making application, furnish a corporate surety bond in the penal sum of not less than one hundred thousand dollars. The bond shall be on a form prescribed by the Attorney General of the State of Nebraska and shall be signed by the Nebraska registered agent. The bond shall provide: (a) That the applicant will faithfully perform all the terms and conditions of such license; (b) that the licensed dealer will first fully indemnify any holder of a lien or security interest created pursuant to section 60-164 or article 9, Uniform Commercial Code, whichever applies, in the order of its priority and then any person or other dealer by reason of any loss suffered because of (i) the substitution of any motor vehicle or trailer other than the one selected by the purchaser, (ii) the dealer's failure to deliver to the purchaser a clear and marketable title, (iii) the dealer's misappropriation of any funds belonging to the purchaser, (iv) any alteration on the part of the dealer so as to deceive the purchaser as to the year model of any motor vehicle or trailer, (v) any false and fraudulent representations or deceitful practices whatever in representing any motor vehicle or trailer, (vi) the dealer's failure to remit the proceeds from the sale of any motor vehicle which is subject to a lien or security interest to the holder of such lien or security interest, and (vii) the dealer's failure to pay any person or other dealer for the purchase of a motor vehicle, motorcycle, trailer, or any part or other purchase; and (c) that the motor vehicle, motorcycle, motor vehicle auction, or trailer dealer or wholesaler shall well, truly, and faithfully comply with all the provisions of his or her license and the acts of the Legislature relating to such license. The aggregate liability of the surety shall in no event exceed the penalty of such bond.

**Source:** Laws 1945, c. 143, § 11, p. 463; Laws 1947, c. 210, § 1, p. 686; Laws 1953, c. 216, § 1, p. 764; R.R.S.1943, § 60-619; Laws 1963, c. 365, § 15, p. 1180; Laws 1967, c. 394, § 11, p. 1238; Laws 1972, LB 1335, § 13; Laws 1974, LB 754, § 15; Laws 1984, LB 825, § 30; Laws 1989, LB 608, § 1; Laws 1999, LB 550, § 41; Laws 1999, LB 632, § 6; Laws 2005, LB 276, § 108; Laws 2007, LB681, § 2.

A false representation, standing alone, is insufficient to justify recovery by a lienholder under subsection (2)(e) of this section. The lienholder must also show that its loss is proximately caused by the false representation. This section provides no relief for conversion of a vehicle apart from a cause of action for false representation. *First Nat. Bank in Morrill v. Union Ins. Co.*, 246 Neb. 636, 522 N.W.2d 168 (1994).

A motor vehicle dealer's bond protects persons in addition to purchasers against loss resulting from misappropriation of funds belonging to the purchasers. A bank can recover on a motor vehicle dealer's bond if it can prove that it sustained a loss as a result of the dealer's breach of one of the conditions of the bond. *Adams Bank & Trust v. Empire Fire & Marine Ins. Co.*, 235 Neb. 464, 455 N.W.2d 569 (1990).

A bank, if it can prove a loss occasioned by a statutory motor vehicle dealer's breach of one of the conditions outlined in this statute, is entitled to recover on the dealer's statutory bond. *Havelock Bank v. Western Surety Co.*, 217 Neb. 560, 352 N.W.2d 855 (1984).

A motor vehicle dealer's bond, furnished pursuant to the provisions of this section, which creates a liability on the part of the surety to indemnify any person "by reason of any loss suffered" requires proof of an actual loss suffered before recovery is permitted, and does not cover statutory penalties. *Darr v. Long*, 210 Neb. 57, 313 N.W.2d 215 (1981).

Failure of motor vehicle dealer to keep a promise to do an act in the future did not amount to fraud. *Sterner v. Lehmanowsky*, 173 Neb. 401, 113 N.W.2d 588 (1962).

Any loss by reason of a motor vehicle dealer's conduct in engaging in acts prohibited by law and enumerated in this section entitles the offended party recourse on a motor vehicle dealer's bond. A dealer's oral promise to repay a party upon the subsequent sale of vehicles did not create a security interest, and therefore, the dealer's failure to remit the proceeds to the party did not amount to a misappropriation of anyone's funds, nor was the dealer's failure to pay an unlawful act. *Paus Motor Sales, Inc. v. Western Surety Co.*, 6 Neb. App. 233, 572 N.W.2d 403 (1997).

### **60-1420 Franchise; termination; noncontinuance; change community; hearing; when required.**

(1) Except as provided in subsection (2) or (3) of this section, no franchisor shall terminate or refuse to continue any franchise or change a franchisee's community unless the franchisor has first established, in a hearing held pursuant to section 60-1425, that:

(a) The franchisor has good cause for termination, noncontinuance, or change;

(b) Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the franchisee's service formerly provided, or that the community cannot be reasonably expected to support such a dealership; and

(c) Upon termination or noncontinuance, the franchisor is willing and able to comply with section 60-1430.02.

(2) Upon providing good and sufficient evidence to the board, a franchisor may terminate a franchise without such hearing (a) for a particular line-make if the franchisor discontinues that line-make, (b) if the franchisee's license as a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer is revoked pursuant to the Motor Vehicle Industry Regulation Act, or (c) upon a mutual written agreement of the franchisor and franchisee.

(3) A franchisor may change a franchisee's community without a hearing if the franchisor notifies the franchisee of the proposed change at least thirty days before the change, provides the franchisee an opportunity to object, and enters into an agreement with the franchisee regarding the change of the franchisee's community. If no agreement is reached, the franchisor shall comply with sections 60-1420 to 60-1435 prior to changing the franchisee's community.

**Source:** Laws 1971, LB 768, § 20; Laws 1987, LB 327, § 1; Laws 1989, LB 280, § 5; Laws 2010, LB816, § 72; Laws 2011, LB477, § 2.

The Federal Arbitration Act preempts Nebraska law which is in conflict with the act. *Cornhusker Internat. Trucks v. Thomas Built Buses*, 263 Neb. 10, 637 N.W.2d 876 (2002).

The means by which a dealership can be terminated are found solely within this section. *Chrysler Motors Corp. v. Lee Janssen Motor Co.*, 248 Neb. 322, 534 N.W.2d 309 (1995).

Where the Nebraska Motor Vehicle Industry Licensing Board's order is clearly conditional, operating only in the event that the franchisor finds another franchisee and notifies the board of the fact that it has done so, it is not a final order and is therefore not appealable. *Garber v. State*, 241 Neb. 523, 489 N.W.2d 550 (1992).

### **60-1421 Franchise; termination; effect.**

If franchisor is permitted to terminate or not continue a franchise, and is further permitted not to enter into a franchise, for the line-make in the

community, no franchise shall thereafter be entered into for the sale of a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer of that line-make in the community, unless the franchisor has first established in a hearing held under the Motor Vehicle Industry Regulation Act that there has been a change of circumstances so that the community at that time can be reasonably expected to support the dealership.

**Source:** Laws 1971, LB 768, § 21; Laws 2010, LB816, § 73.

**60-1422 Franchise; hearing; approval.**

No franchisor shall enter into any franchise for the purpose of establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership or warranty repair service facility, in any community in which the same line-make is then represented, unless the franchisor has first established in a hearing held under the Motor Vehicle Industry Regulation Act that there is good cause for such additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership under such franchise, or warranty repair service facility, and that it is in the public interest.

**Source:** Laws 1971, LB 768, § 22; Laws 2003, LB 182, § 2; Laws 2010, LB816, § 74.

In an application for the establishment of a new motor vehicle franchise, the franchisor has the burden of establishing the existence of good cause for establishing the dealership and that such dealership is in the public interest. In re Application of General Motors Corp., 232 Neb. 11, 439 N.W.2d 453 (1989).

**60-1423 Franchise; contract; fulfillment; violation; damages.**

Every franchisor and franchisee shall fulfill the terms of any express or implied warranty concerning the sale of a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer to the public of the line-make which is the subject of a contract or franchise agreement between the parties. If it is determined by the district court that either the franchisor or franchisee, or both, have violated an express or implied warranty, the court shall add to any award or relief granted an additional award for reasonable attorney fees and other necessary expenses for maintaining the litigation.

**Source:** Laws 1971, LB 768, § 23.

**60-1424 Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application.**

If a franchisor seeks to terminate or not continue any franchise or change a franchisee's community, or seeks to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle or trailer dealership of the same line-make, the franchisor shall file an application with the board for permission to terminate or not continue the franchise, to change a franchisee's community, or to enter into a franchise for additional representation of the same line-make in that community, except that no application needs to be filed to change a franchisee's community if an agreement has been entered into as provided in subsection (3) of section 60-1420.

**Source:** Laws 1971, LB 768, § 24; Laws 2011, LB477, § 3.

**60-1425 Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application; hearing; notice.**

Upon receiving an application under section 60-1424, the board shall enter an order fixing a time, which shall be within ninety days of the date of such order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchisor seeks to terminate, not continue, or change. If the application requests permission to change a franchisee's community or establish an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The board may also give notice of franchisor's application to any other parties whom the board may deem interested persons, such notice to be in the form and substance and given in the manner the board deems appropriate. Any person who can show an interest in the application may become a party to the hearing, whether or not he or she receives notice, but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise, the change in community, or the establishment of an additional motor vehicle dealership.

**Source:** Laws 1971, LB 768, § 25; Laws 2011, LB477, § 4.

**60-1426 Franchise; termination; additional; application; hearing; continuance.**

If the board finds it desirable it may upon request continue the date of hearing for a period of ninety days, and may upon application, but not ex parte, continue the date of hearing for an additional period of ninety days.

**Source:** Laws 1971, LB 768, § 26.

**60-1427 Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.**

Upon hearing, the franchisor shall have the burden of proof to establish that under the Motor Vehicle Industry Regulation Act the franchisor should be granted permission to terminate or not continue the franchise, to change the franchisee's community, or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

Nothing contained in the act shall be construed to require or authorize any investigation by the board of any matter before the board under the provisions of sections 60-1420 to 60-1435. Upon hearing, the board shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made.

**Source:** Laws 1971, LB 768, § 27; Laws 1972, LB 1335, § 14; Laws 2010, LB816, § 75; Laws 2011, LB477, § 5.

The auto manufacturer-franchisor carries the burden of proof to provide evidence sufficient to terminate an auto franchise. American Motors Sales Corp. v. Perkins, 198 Neb. 97, 251 N.W.2d 727 (1977).

**60-1428 Franchise; discovery; inspection; rules of civil procedure.**

The rules of civil procedure relating to discovery and inspection shall apply to hearings held under the Motor Vehicle Industry Regulation Act, and the board may issue orders to give effect to such rules.

If issues are raised which would involve violations of any state or federal antitrust or price-fixing law, all discovery and inspection proceedings which would be available under such issues in a state or federal court action shall be available to the parties to the hearing, and the board may issue orders to give effect to such proceedings.

Evidence which would be admissible under the issues in a state or federal court action shall be admissible in a hearing held by the board. The board shall apportion all costs between the parties.

**Source:** Laws 1971, LB 768, § 28; Laws 2010, LB816, § 76.

**60-1429 Franchise; termination; noncontinuation; change community; additional dealership; acts not constituting good cause.**

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not constitute good cause, as used in sections 60-1420 and 60-1422, for the termination or noncontinuation of a franchise, for changing the franchisee's community, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

- (1) The sole fact that the franchisor desires further penetration of the market;
- (2) The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community. Substantially detrimental may include, but is not limited to, the failure of any proposed transferee or individual to meet the current criteria generally applied by the franchisor in qualifying new motor vehicle dealers; or
- (3) The fact that the franchisee refused to purchase or accept delivery of any motor vehicle, combination motor vehicle and trailer, motorcycle, trailer, vehicle parts or accessories, or other commodity or service not ordered by the franchisee.

**Source:** Laws 1971, LB 768, § 29; Laws 1984, LB 825, § 32; Laws 1989, LB 280, § 6; Laws 2011, LB477, § 6.

Change of ownership of a franchisee's dealership is not good cause for termination of the franchise unless the franchisor proves that the change of ownership will be substantially detrimental to the distribution of franchisor's motor vehicles in the community. *S & T Motors v. General Motors Corp.*, 203 Neb. 188, 277 N.W.2d 701 (1979).

The term "motor vehicle" as used in this section refers to the motor vehicle covered by the franchise and does not refer to all of the motor vehicles which a franchisor may distribute through

various divisions and separate franchises. *S & T Motors v. General Motors Corp.*, 203 Neb. 188, 277 N.W.2d 701 (1979).

When the franchisee transfers its ownership, the franchisor need not recognize the transfer until after the board has had a chance to act on the issue of whether the transfer is detrimental to the distribution of franchisor's vehicles in the community. *Kizzier Chevrolet Co. v. General Motors Corp.*, 705 F.2d 322 (8th Cir. 1983).

**60-1430 Franchise; sale or transfer of ownership; franchisor; duties.**

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, subject to subdivision (2) of section 60-1429, in the event of the sale or a contract for sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer or in the event of change in the executive management of the franchisee's dealership, the franchisor shall give effect to such a change in the franchise unless (1) the transfer of the franchisee's license under the Motor Vehicle Industry Regulation Act is denied

or the new owner is unable to obtain a license under the act, as the case may be, or (2) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community if the franchisor has given written notice of such fact to the franchisee within sixty days of receipt by the franchisor of information reasonably necessary to evaluate the proposed change.

**Source:** Laws 1971, LB 768, § 30; Laws 1984, LB 825, § 33; Laws 1989, LB 280, § 7; Laws 2010, LB816, § 77.

In the event of sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business, the franchisor shall give effect to such change in the franchise unless the transfer of the franchisee's license under the act is denied or the new owner is unable to obtain a license. *S & T Motors v. General Motors Corp.*, 203 Neb. 188, 277 N.W.2d 701 (1979).

After the transfer of a franchise, the franchisor need not give effect to the contract for a change of ownership until it has had the opportunity to show that such a change would be detrimental

to the distribution of the franchisor's motor vehicles. *Kizzier Chevrolet Co. v. General Motors Corp.*, 705 F.2d 322 (8th Cir. 1983).

When the franchisee transfers its ownership, the franchisor need not recognize the transfer until after the board has had a chance to act on the issue of whether the transfer is detrimental to the distribution of franchisor's vehicles in the community. *Kizzier Chevrolet Co. v. General Motors Corp.*, 705 F.2d 322 (8th Cir. 1983).

#### **60-1430.01 Succession to new motor vehicle dealership by family member; conditions.**

(1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within one hundred twenty days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause.

(2) The manufacturer or distributor may request from a designated family member such personal financial data as is reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor that succession, the manufacturer or distributor may, within sixty days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, or within sixty days after the receipt of the requested personal and financial data, whichever is later, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subsection (3) of this section shall state the specific ground for the refusal to approve the succession and that discontinuance of the agreement shall take effect not less than ninety days after the date the notice is served.

(5) If notice of refusal is not served within the sixty days provided for in subsection (3) of this section, the dealer agreement shall continue in effect and shall be subject to termination only as otherwise permitted by the Motor Vehicle Industry Regulation Act.



(6) This section shall not preclude a new motor vehicle dealer from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone shall determine the succession rights to the management and operation of the dealership.

**Source:** Laws 1984, LB 825, § 34; Laws 2010, LB816, § 78.

**60-1430.02 Franchise termination, cancellation, or noncontinuation; termination, elimination, or cessation of line-make; payments required; mitigate damages.**

(1) Upon the termination, cancellation, or noncontinuation of a franchise by the franchisor or franchisee pursuant to the Motor Vehicle Industry Regulation Act, the franchisor shall pay the franchisee:

(a) The dealer cost, plus any charges made by the franchisor for distribution, delivery, and taxes, less all allowances paid or credited to the franchisee by the franchisor, of unused, undamaged, and unsold motor vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the same line and made within the previous twelve months;

(b) The dealer cost, less all allowances paid or credited to the franchisee by the franchisor, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that (i) in the case of sheet metal, a comparable substitute for original packaging may be used if such supply, part, or accessory is offered for sale by the franchisor and was acquired from the franchisor or the predecessor franchisee as a part of the franchisee's initial inventory and (ii) in the case of a motorcycle franchise, the payment for such supplies, parts, and accessories shall be based upon the currently published dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories currently offered for sale by the franchisor and originally acquired from the franchisor or the predecessor franchisee as a part of the franchisee's initial inventory, and all such supplies, parts, and accessories shall be currently identifiable and labeled and in the original packaging or a comparable substitute for the original packaging;

(c) The fair market value of each undamaged sign owned by the franchisee which bears a common name, trade name, or trademark of the franchisor if acquisition of such sign was recommended or required by the franchisor;

(d) The fair market value of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor which were recommended and required by the franchisor and are in good and usable condition except for reasonable wear and tear; and

(e) The cost of transporting, handling, packing, and loading motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

(2) The franchisor shall pay the franchisee the amounts specified in subsection (1) of this section within ninety days after the tender of the property if the franchisee has clear title to the property and is in a position to convey that title to the franchisor. This section shall not apply to a termination or noncontinuation of a franchise that is implemented as a result of the sale of the assets or stock of the franchisee.

(3)(a) If the termination, cancellation, or nonrenewal of a franchise is the result of the termination, elimination, or cessation of a line-make by the

manufacturer, distributor, or factory branch, then, in addition to the payments to the franchisee pursuant to subsection (1) of this section, the manufacturer, distributor, or factory branch shall be liable to the franchisee for an amount at least equivalent to the fair market value of the franchise for the line-make, which shall be the greater of that value determined as of (i) the date the franchisor announces the action that results in termination, cancellation, or nonrenewal of the line-make or (ii) the date the action that resulted in termination, cancellation, or nonrenewal of the line-make first became general knowledge. In determining the fair market value of a franchise for a line-make, if the line-make is not the only line-make for which the franchisee holds a franchise in the dealership facilities, the franchisee shall also be entitled to compensation for the contribution of the line-make to payment of the rent or to covering obligations for the fair rental value of the franchise facilities for the period set forth in subdivision (b) of this subsection. Fair market value of the franchise for the line-make shall only include the goodwill value of the franchise for that line-make in the franchisee's community.

(b) If the line-make is the only line-make for which the franchisee holds a franchise, the manufacturer, distributor, or factory branch shall also pay assistance with respect to the franchise facilities leased or owned by the franchisee as follows:

(i) The manufacturer, distributor, or factory branch shall pay the franchisee a sum equivalent to the rent for the unexpired term of the lease or two years' rent, whichever is less; or

(ii) If the franchisee owns the franchise facilities, the manufacturer, distributor, or factory branch shall pay the franchisee a sum equivalent to the reasonable rental value of the franchise facilities for two years.

(c) To be entitled to franchise facilities assistance from the manufacturer, distributor, or factory branch, the franchisee shall have the obligation to mitigate damages by listing the franchise facilities for lease or sublease with a licensed real estate agent within thirty days after the effective date of the termination of the franchise and by reasonably cooperating with the real estate agent in the performance of the agent's duties and responsibilities. If the franchisee is able to lease or sublease the franchise facilities on terms that are consistent with local zoning requirements to preserve the right to sell motor vehicles from the franchise facilities and the terms of the franchisee's lease, the franchisee shall be obligated to pay the manufacturer the net revenue received from such mitigation, but only following receipt of franchise facilities assistance payments pursuant to subdivision (3)(b) of this section and only up to the total amount of franchise facilities assistance payments that the franchisee has received.

(d) This subsection does not apply to the termination of a line-make by a franchisor of recreational vehicles.

(4) This section shall not relieve a franchisee from any other obligation to mitigate damages upon termination, cancellation, or noncontinuation of the franchise.

**Source:** Laws 1989, LB 280, § 8; Laws 2010, LB816, § 79.

**60-1431 Franchise; board; power of subpoena; administer oaths; compel witnesses and production of books, papers, documents; enforcement.**

The board may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The board may apply to the district court of the county wherein the hearing is being held for a court order enforcing this section.

**Source:** Laws 1971, LB 768, § 31.

**60-1432 Franchise; denial; license refused.**

If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership in a community where the same line-make is then represented, without first complying with the Motor Vehicle Industry Regulation Act, no license under the act shall be issued to that franchisee or proposed franchisee to engage in the business of selling motor vehicles, combination motor vehicles and trailers, motorcycles, or trailers manufactured or distributed by that franchisor.

**Source:** Laws 1971, LB 768, § 32; Laws 2010, LB816, § 80.

**60-1433 Franchise; termination; discontinuance; evidence of good cause.**

In determining whether good cause has been established for terminating or not continuing a franchise, the board shall take into consideration the existing circumstances, including, but not limited to:

- (1) Amount of business transacted by the franchisee;
- (2) Investment necessarily made and obligations incurred by the franchisee in the performance of his part of the franchise;
- (3) Permanency of the investment;
- (4) Whether it is injurious to the public welfare for the business of the franchisee to be disrupted;
- (5) Whether the franchisee has adequate motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer service facilities, equipment, parts and qualified service personnel to reasonably provide consumer care for the motor vehicles, combination motor vehicles and trailers, motorcycles, or trailers sold at retail by the franchisee and any other motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer of the same line-make;
- (6) Whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for such warranty work performed by the franchisee;
- (7) Except as provided in section 60-1429, failure by the franchisee to substantially comply with those requirements of the franchise which are determined by the board to be reasonable and material; and
- (8) Except as provided in section 60-1429, bad faith by the franchisee in complying with those terms of the franchise which are determined by the board to be reasonable and material.

**Source:** Laws 1971, LB 768, § 33.

Auto dealer-franchisee, who was proven to not meet the criteria of this section, was terminated as franchisee. American Motors Sales Corp. v. Perkins, 198 Neb. 97, 251 N.W.2d 727 (1977).

The nonexclusive factors of section call for a qualitative rather than a quantitative analysis. Chrysler Corp. v. Lee Janssen Motor Co., 9 Neb. App. 721, 619 N.W.2d 78 (2000).

**60-1434 Franchise; additional; service facility; evidence of good cause.**

In determining whether good cause has been established for entering into an additional franchise for the same line-make, the board shall take into consideration the existing circumstances, including, but not limited to:

- (1) Amount of business transacted by other franchisees of the same line-make in that community;
- (2) Investment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the performance of their part of their franchises;
- (3) Permanency of the investment;
- (4) Effect on the retail motor vehicle business as a whole in that community;
- (5) Whether it is injurious to the public welfare for an additional franchise to be established; and
- (6) Whether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer products of the line-make which shall include the adequacy of motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer service facilities, equipment, supply of parts, and qualified service personnel.

No franchisor, franchisee, or other person shall, directly or indirectly, establish or authorize a separate consumer care or service facility to perform repairs and service, pursuant to the manufacturer's original warranty, on motor vehicles within any community previously assigned to and being served by an existing franchisee without first establishing good cause in the same manner as required for an additional franchise.

**Source:** Laws 1971, LB 768, § 34; Laws 2000, LB 1018, § 7.

In determining good cause for the establishment of a new automobile dealership, the Nebraska Supreme Court specifically considers each criterion as set out in this section. In re Application of General Motors Corp., 232 Neb. 11, 439 N.W.2d 453 (1989).

**60-1435 Franchise; appeal.**

Any party to a hearing before the board may appeal any final order entered in such hearing, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1971, LB 768, § 35; Laws 1988, LB 352, § 108.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**60-1436 Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.**

A manufacturer or distributor shall not require or coerce any new motor vehicle dealer in this state to do any of the following:

- (1) Order or accept delivery of any new motor vehicle, part or accessory, equipment, or other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer or retain any part or accessory that the dealer has not sold within twelve months if the part or accessory was not obtained through a specific order initiated by the dealer but was specified for, sold to, and shipped to the dealer pursuant to an automatic ordering system, if

the part or accessory is in the condition required for return, and if the part or accessory is returned within thirty days after such twelve-month period. For purposes of this subdivision, automatic ordering system means a computerized system required by the franchisor, manufacturer, or distributor that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory returned under this subdivision. In determining whether parts or accessories in the dealer's inventory were specified and sold under an automated ordering system, the parts and accessories in the dealer's inventory are presumed to be the most recent parts and accessories that were sold to the dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(2) Offer or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(3) Participate monetarily in any advertising campaign or contest or purchase any promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer;

(4) Join, contribute to, or affiliate with an advertising association;

(5) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of the Motor Vehicle Industry Regulation Act;

(6) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(7) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products as long as the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer;

(8) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by the act or require any controversy between the new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer;

(9) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if such changes or alterations would be unreasonable, including unreasonably requiring a franchisee to establish, maintain, or continue exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities for a line-make, unless such exclusivity is reasonable and otherwise justified by reasonable business consid-

erations. In making that determination, the franchisor shall take into consideration the franchisee's compliance with facility requirements as required by the franchise agreement. The franchisor shall have the burden of proving that business considerations justify exclusivity;

(10) Release, convey, or otherwise provide customer information if to do so is unlawful or if the customer objects in writing to doing so, unless the information is necessary for the manufacturer, factory branch, or distributor to meet its obligations to consumers or the new motor vehicle dealer including vehicle recalls or other requirements imposed by state or federal law;

(11) Release to any unaffiliated third party any customer information which has been provided by the new motor vehicle dealer to the manufacturer except as provided in subdivision (10) of this section. A manufacturer, importer, or distributor may not share, sell, or transfer customer information, obtained from a dealer and not otherwise publicly available, to other dealers franchised by the manufacturer while the originating dealer is still a franchised dealer of the manufacturer unless otherwise agreed to by the originating dealer. A manufacturer, importer, or distributor may not use any nonpublic personal information, as that term is used in 16 C.F.R. part 313, which is obtained from a dealer unless such use falls within one or more of the exceptions to opt out requirements under 16 C.F.R. 313.14 or 313.15;

(12) Establish in connection with the sale of a motor vehicle prices at which the dealer must sell products or services not manufactured or distributed by the manufacturer or distributor, whether by agreement, program, incentive provision, or otherwise;

(13) Underutilize the dealer's facilities by requiring or coercing a dealer to exclude or remove from the dealer's facilities operations for selling or servicing a line-make of motor vehicles for which the dealer has a franchise agreement to utilize the facilities, except that this subdivision does not prohibit a manufacturer from requiring an exclusive sales area within the facilities that are in compliance with reasonable requirements for the facilities if the dealer complies with subdivision (9) of this section; or

(14)(a) Enter into any agreement with a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates which gives site control of the premises of the dealer that does not terminate upon the occurrence of any of the following events:

(i) The right of the franchisor to manufacture or distribute the line-make of vehicles covered by the dealer's franchise is sold, assigned, or otherwise transferred by the manufacturer, factory branch, distributor, or distributor branch to another; or

(ii) The final termination of the dealer's franchise for any reason unless an agreement for site control is voluntarily negotiated separately and apart from the franchise agreement and consideration has been offered by the manufacturer and accepted by the dealer. If a dealer voluntarily terminates and has entered into a separately negotiated site control agreement, the agreement may survive the termination if the agreement clearly states that fact.

(b) For purposes of this subdivision, site control means the contractual right to control in any way the commercial use and development of the premises upon which a dealer's business operations are located, including the right to approve of additional or different uses for the property beyond those of its

franchise, the right to lease or sublease the dealer's property, or the right or option to purchase the dealer's property.

Any action prohibited for a manufacturer or distributor under the Motor Vehicle Industry Regulation Act is also prohibited for a subsidiary which is wholly owned or controlled by contract by a manufacturer or distributor or in which a manufacturer or distributor has more than a ten percent ownership interest, including a financing division.

**Source:** Laws 1984, LB 825, § 19; Laws 1999, LB 632, § 7; Laws 2010, LB816, § 81; Laws 2011, LB477, § 7.

**60-1437 Manufacturer or distributor; prohibited acts with respect to new motor vehicles.**

In addition to the restrictions imposed by section 60-1436, a manufacturer or distributor shall not:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor;

(2) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor or, if a line-make is allocated among new motor vehicle dealers, refuse to disclose to any new motor vehicle dealer that handles the same line-make the system of allocation, including, but not limited to, a complete breakdown by model, and a concise listing of dealerships with an explanation of the derivation of the allocation system, including its mathematical formula in a clear and comprehensible form;

(3) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest;

(4) Increase the price of any new motor vehicle which the new motor vehicle dealer had ordered and delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of such order. In the event of manufacturer or distributor price reduction or cash rebate, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to a new model or series of motor vehicles at the time of the introduction of the new model or series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(a) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(b) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(c) Any increase in transportation charges due to an increase in rates charged by a common carrier or other transporter;

(5) Fail or refuse to sell or offer to sell to all franchised new motor vehicle dealers in a line-make every new motor vehicle sold or offered for sale to any franchised new motor vehicle dealer of the same line-make. However, the failure to deliver any such new motor vehicle shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or any other cause over which the franchisor has no control. A manufacturer or distributor shall not require that any of its new motor vehicle dealers located in this state pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the new motor vehicle dealer's existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the provisions of this subdivision, nothing contained in this section shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this state purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of new motor vehicles. This subdivision shall not apply to manufacturers of recreational vehicles;

(6) Fail to offer dealers of a specific line-make a new franchise agreement containing substantially similar terms and conditions for sales of the line-make if the ownership of the manufacturer or distributor changes or there is a change in the plan or system of distribution;

(7) Take an adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States. A franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the motor vehicle would be exported to a location outside the United States. A dealer is presumed to have no knowledge that a motor vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States (a) the motor vehicle is titled, (b) the motor vehicle is registered, and (c) applicable state and local taxes are paid for the motor vehicle. Such presumption may be rebutted by direct, clear, and convincing evidence that the dealer knew or reasonably should have known at the time of the original sale or lease that the motor vehicle would be exported to a location outside the United States. Except as otherwise permitted by subdivision (7) of this section, a franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is void and unenforceable;

(8) Discriminate against a dealer holding a franchise for a line-make of the manufacturer or distributor in favor of other dealers of the same line-make in this state by:



(a) Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in this state during a similar time period; or

(b) Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in this state during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in this state on substantially comparable terms;

(9) Refuse to pay a new motor vehicle dealer for sales incentives, service incentives, rebates, or other forms of incentive compensation within thirty days after their approval by the manufacturer or distributor. The manufacturer or distributor shall either approve or disapprove each claim by the dealer within thirty days after receipt of the claim in a proper form generally used by the manufacturer or distributor. Any claims not specifically disapproved in writing within thirty days after receipt shall be considered to be approved;

(10) Perform an audit to confirm payment of a sales incentive, service incentive, rebate, or other form of incentive compensation more than twelve months after the date of payment of the claim or twelve months after the end of the incentive program by the new motor vehicle dealer unless the claim is fraudulent;

(11) Reduce the amount to be paid to a new motor vehicle dealer for a sales incentive, service incentive, rebate, or other form of incentive compensation or charge back a new motor vehicle dealer subsequent to the payment of the claim for a sales incentive, service incentive, rebate, or other form of incentive compensation unless the manufacturer or distributor shows that the claim lacks required documentation or is alleged to be false, fraudulent, or based on a misrepresentation.

A manufacturer or distributor may not deny a claim based solely on a new motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error, that does not put into question the legitimacy of the claim. No reduction in the amount to be paid to the new motor vehicle dealer and no charge back subsequent to the payment of a claim may be made until the new motor vehicle dealer has had notice and an opportunity to correct any deficiency and resubmit the claim and to participate in all franchisor internal appeal processes as well as all available legal processes. If a charge back is the subject of adjudication, internal appeal, mediation, or arbitration, no charge back shall be made until, in the case of an adjudication or legal action, a final order has been issued.

A claim for reimbursement by the manufacturer or distributor of sums due following an audit must be presented to the dealer within ninety days after completion of the audit of the item subject to the claim. A manufacturer or distributor may not setoff or otherwise take control over funds owned or under the control of the new motor vehicle dealer or which are in an account designated for the new motor vehicle dealer when such action is based upon the findings of an audit or other claim with respect thereto until a final decision

is issued with respect to any challenge or appeal by either party of any such audit or claim.

Any ambiguity or inconsistency in submission guidelines shall be construed against the manufacturer or distributor;

(12) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract, extended maintenance plan, gap policy, gap waiver, or other aftermarket product or service offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons; or

(13) Prohibit a franchisee from acquiring a line-make of new motor vehicles solely because the franchisee owns or operates a franchise of the same line-make in a contiguous market.

Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

**Source:** Laws 1984, LB 825, § 20; Laws 1999, LB 632, § 8; Laws 2010, LB816, § 82; Laws 2011, LB477, § 8; Laws 2012, LB896, § 1.

**60-1438 Manufacturer or distributor; warranty obligation; prohibited acts.**

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service which such manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing motor vehicles and all parts and components included in or manufactured for installation in the motor vehicles of the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service and the time allowance for the performance of the work and service.

(2)(a) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers, as long as such rates are reasonable. In determining prevailing wage rates, the rate of compensation for labor for that portion of repair orders

for routine maintenance, such as tire repair or replacement and oil and fluid changes, shall not be used.

(b) For purposes of this section, compensation for parts may be determined by calculating the price paid by the dealer for parts, including all shipping and other charges, multiplied by the sum of one and the dealer's average percentage markup over the price paid by the dealer for parts purchased by the dealer from the manufacturer and sold at retail. The dealer may establish average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring what the average percentage markup is. Within thirty days after receipt of the repair orders, the manufacturer may audit the submitted repair orders and approve or deny approval of the average percentage markup based on the audit. The average percentage markup shall go into effect forty-five days after the approval based on that audit. If the manufacturer denies approval of the average percentage markup declared by the dealer, the dealer may file a complaint with the board. The manufacturer shall have the burden to establish that the denial was reasonable. If the board determines that the denial was not reasonable, the denial shall be deemed a violation of the Motor Vehicle Industry Regulation Act subject to the enforcement procedures of the act. Only retail sales not involving warranty repairs or parts supplied for routine vehicle maintenance shall be considered in calculating average percentage markup. No manufacturer shall require a dealer to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not request a change in the average percentage markup more than twice in one calendar year.

(3) A manufacturer or distributor shall not do any of the following:

(a) Fail to perform any warranty obligation;

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) A dealer's claim for warranty compensation may be denied only if:

(a) The dealer's claim is based on a nonwarranty repair;

(b) The dealer lacks documentation for the claim;

(c) The dealer fails to comply with specific substantive terms and conditions of the franchisor's warranty compensation program; or

(d) The manufacturer has a bona fide belief based on competent evidence that the dealer's claim is intentionally false, fraudulent, or misrepresented.

(5) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be made within six months after completing the work and shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the

form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for one year after payment, except that if the manufacturer has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent, the manufacturer has the right to audit the claims for four years after payment. For purposes of this subsection, reasonable cause means a bona fide belief based upon evidence that the issues of fact are such that a person of ordinary caution, prudence, and judgment could believe that a claim was intentionally false or fraudulent. As a result of an audit authorized under this subsection, the manufacturer has the right to charge back to the new motor vehicle dealer the amount of any previously paid claim after the new motor vehicle dealer has had notice and an opportunity to participate in all franchisor internal appeal processes as well as all available legal processes. The requirement to approve and pay the claim within thirty days after receipt of the claim does not preclude chargebacks for any fraudulent claim previously paid. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error that does not put into question the legitimacy of the claim. If a claim is rejected for a clerical error, the dealer may resubmit a corrected claim in a timely manner.

(6) The warranty obligations set forth in this section shall also apply to any manufacturer of a new motor vehicle transmission, engine, or rear axle that separately warrants its components to customers.

(7) This section does not apply to recreational vehicles.

**Source:** Laws 1984, LB 825, § 21; Laws 1991, LB 393, § 1; Laws 2003, LB 371, § 1; Laws 2010, LB816, § 83; Laws 2011, LB477, § 9; Laws 2013, LB165, § 1.

**60-1438.01 Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.**

(1) For purposes of this section, manufacturer or distributor includes (a) a factory representative or a distributor representative or (b) a person who is affiliated with a manufacturer or distributor or who, directly or indirectly through an intermediary, is controlled by, or is under common control with, the manufacturer or distributor. A person is controlled by a manufacturer or distributor if the manufacturer or distributor has the authority directly or indirectly, by law or by agreement of the parties, to direct or influence the management and policies of the person. A franchise agreement with a Nebraska-licensed dealer which conforms to and is subject to the Motor Vehicle Industry Regulation Act is not control for purposes of this section.

(2) Except as provided in this section, a manufacturer or distributor shall not directly or indirectly:

(a) Own an interest in a franchise, franchisee, or consumer care or service facility, except that a manufacturer or distributor may hold stock in a publicly held franchise, franchisee, or consumer care or service facility so long as the manufacturer or distributor does not by virtue of holding such stock operate or control the franchise, franchisee, or consumer care or service facility;

(b) Operate or control a franchise, franchisee, or consumer care or service facility; or

(c) Act in the capacity of a franchisee or motor vehicle dealer.

(3) A manufacturer or distributor may own an interest in a franchisee or otherwise control a franchise for a period not to exceed twelve months after the date the manufacturer or distributor acquires the franchise if:

(a) The person from whom the manufacturer or distributor acquired the franchise was a franchisee; and

(b) The franchise is for sale by the manufacturer or distributor.

(4) For purposes of broadening the diversity of its franchisees and enhancing opportunities for qualified persons who lack the resources to purchase a franchise outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a franchise if the manufacturer's or distributor's participation in the franchise is in a bona fide relationship with a franchisee and the franchisee:

(a) Has made a significant investment in the franchise, which investment is subject to loss;

(b) Has an ownership interest in the franchise; and

(c) Operates the franchise under a plan to acquire full ownership of the franchise within a reasonable time and under reasonable terms and conditions.

(5) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit set forth in subsection (3) of this section. An extension may not exceed twelve months. An application for an extension after the first extension is granted is subject to protest by a franchisee of the same line-make whose franchise is located in the same community as the franchise owned or controlled by the manufacturer or distributor.

(6) The prohibition in subdivision (2)(b) of this section shall not apply to any manufacturer of manufactured housing, recreational vehicles, or trailers.

(7) The prohibitions set forth in subsection (2) of this section shall not apply to a manufacturer that:

(a) Does not own or operate more than two such dealers or dealership locations in this state;

(b) Owned, operated, or controlled a warranty repair or service facility in this state as of January 1, 2016;

(c) Manufactures engines for installation in a motor-driven vehicle with a gross vehicle weight rating of more than sixteen thousand pounds for which motor-driven vehicle evidence of title is required as a condition precedent to registration under the laws of this state, if the manufacturer is not otherwise a manufacturer of motor vehicles; and

(d) Provides to dealers on substantially equal terms access to all support for completing repairs, including, but not limited to, parts and assemblies, training and technical service bulletins, and other information concerning repairs that the manufacturer provides to facilities owned, operated, or controlled by the manufacturer.

**Source:** Laws 2000, LB 1018, § 3; Laws 2010, LB816, § 84; Laws 2011, LB477, § 10; Laws 2016, LB977, § 27.

**60-1439 Dealer, manufacturer, distributor; liability for damages to motor vehicles.**

(1) The new motor vehicle dealer shall be solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the

ultimate purchaser. A delivery receipt signed by a new motor vehicle dealer shall be evidence of such dealer's acceptance of any new motor vehicles.

(2) The manufacturer or distributor shall be liable for all damages to motor vehicles before delivery to a carrier or transporter and while such vehicles are on the carrier or transporter, except that if the new motor vehicle dealer selected the method and mode of transportation and the carrier or transporter, then such dealer shall be liable for damages to any new motor vehicles after delivery to the carrier or transporter.

**Source:** Laws 1984, LB 825, § 22.

**60-1439.01 Motor vehicle provided by motor vehicle dealer; motor vehicle insurance policies; primary coverage; secondary coverage.**

During the time when an insured person is operating a motor vehicle provided by a motor vehicle dealer for use while the insured person's motor vehicle is being serviced, repaired, or inspected by the motor vehicle dealer, when both the insured person's and motor vehicle dealer's motor vehicle insurance policies have a mutually repugnant clause regarding primary coverage, the insured person's motor vehicle insurance policy shall provide primary coverage for the motor vehicle and the motor vehicle insurance policy of the motor vehicle dealer shall provide secondary coverage until the motor vehicle is returned to the motor vehicle dealer. This section only applies to the loan of a motor vehicle by a motor vehicle dealer which occurs without financial remuneration in the form of a fee or lease charge paid directly by the insured person operating the motor vehicle. Payments made by any third party to a motor vehicle dealer, or similar reimbursements, shall not be considered payments directly from the insured person operating the motor vehicle.

**Source:** Laws 2013, LB133, § 2.

**60-1440 Violations; actions for damages and equitable relief; arbitration.**

(1) Any person who is or may be injured by a violation of the Motor Vehicle Industry Regulation Act or any party to a franchise whose business or property is damaged by a violation of the act relating to that franchise may bring an action for damages and equitable relief, including injunctive relief.

(2) When a violation of the act can be shown to be willful or wanton, the court shall award damages. If the manufacturer engages in continued multiple violations of the act, the court may, in addition to any other damages, award court costs and attorney's fees.

(3) A new motor vehicle dealer, if he or she has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that a violation of the act by a manufacturer may have the effect of causing such loss of money or property.

(4) If any action to enforce any of the provisions of the act is brought by a new motor vehicle dealer against a manufacturer and the new motor vehicle dealer prevails, he or she shall be awarded reasonable attorney's fees and the court shall assess costs against the manufacturer.

(5) If any dispute between a franchisor and franchisee becomes subject to resolution by means of binding arbitration, the provisions of the act regulating

the relationship of franchisor and franchisee shall apply in any such proceeding.

**Source:** Laws 1984, LB 825, § 31; Laws 1989, LB 280, § 9; Laws 2010, LB816, § 85.

**60-1441 New motor vehicle dealers; recall repairs; compensation; stop-sale or do-not-drive order; compensation; applicability of section; prohibited acts.**

(1) A manufacturer, distributor, factory branch, or distributor branch shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer, distributor, factory branch, or distributor branch to perform recall repairs on used motor vehicles. Compensation for recall repairs shall be reasonable. If parts or a remedy are not reasonably available to perform a recall service or repair on a used motor vehicle held for sale by a new motor vehicle dealer authorized to sell and service new motor vehicles of the same line-make within thirty days after the initial notice of recall, and a stop-sale or do-not-drive order has been issued on the motor vehicle, the manufacturer, distributor, factory branch, or distributor branch shall compensate the new motor vehicle dealer at a prorated rate of at least one percent of the value of the used motor vehicle per month beginning on the date that is thirty days after the date on which the stop-sale or do-not-drive order was provided to the new motor vehicle dealer until the earlier of either of the following:

- (a) The date the recall or remedy parts are made available; or
- (b) The date the new motor vehicle dealer sells, trades, or otherwise disposes of the affected used motor vehicle.

(2) The value of a used motor vehicle shall be the average trade-in value for used motor vehicles as indicated in an independent third-party guide for the year, make, and model of the recalled used motor vehicle.

(3) This section applies only to used motor vehicles subject to safety or emissions recalls pursuant to and recalled in accordance with federal law and regulations adopted thereunder and if a stop-sale or do-not-drive order has been issued and repair parts or remedy remain unavailable for thirty days or longer.

(4) This section applies only to new motor vehicle dealers holding an affected used motor vehicle for sale:

- (a)(i) In inventory at the time a stop-sale or do-not-drive order was issued; or
- (ii) Which was taken in the used motor vehicle inventory of the new motor vehicle dealer as a consumer trade-in incident to the purchase of a new motor vehicle from the new motor vehicle dealer after the stop-sale or do-not-drive order was issued; and

(b) That is of a line-make which the new motor vehicle dealer is franchised to sell or on which the new motor vehicle dealer is authorized to perform recall repairs.

(5) Subject to the audit provisions of subsection (5) of section 60-1438, it shall be a violation of this section for a manufacturer, distributor, factory branch, or distributor branch to reduce the amount of compensation otherwise owed to an individual new motor vehicle dealer, whether through a chargeback, removal of the individual new motor vehicle dealer from an incentive program, or reduction in amount owed under an incentive program solely because the new motor vehicle dealer has submitted a claim for reimbursement under this section. This

subsection does not apply to an action by a manufacturer, distributor, factory branch, or distributor branch that is applied uniformly among all new motor vehicle dealers of the same line-make in the state.

(6) Any reimbursement claim made by a new motor vehicle dealer pursuant to this section for recall remedies or repairs, or for compensation where no part or repair is reasonably available and the used motor vehicle is subject to a stop-sale or do-not-drive order, shall be subject to the same limitations and requirements as a warranty reimbursement claim made under section 60-1438. In the alternative, a manufacturer, distributor, factory branch, or distributor branch may compensate its franchised new motor vehicle dealers under a national recall compensation program if the compensation under the program is equal to or greater than that provided under subsection (1) of this section; or the new motor vehicle dealer and the manufacturer, distributor, factory branch, or distributor branch otherwise agree.

(7) A manufacturer, distributor, factory branch, or distributor branch may direct the manner and method in which a new motor vehicle dealer demonstrates the inventory status of an affected used motor vehicle in order to determine eligibility for compensation under this section so long as the manner and method are not unduly burdensome and do not require information that is unduly burdensome to provide.

(8) Nothing in this section shall require a manufacturer, distributor, factory branch, or distributor branch to provide total compensation to a new motor vehicle dealer which would exceed the total average trade-in value of the affected used motor vehicle as originally determined under subsection (2) of this section.

(9) Any remedy provided to a new motor vehicle dealer under this section is exclusive and shall not be combined with any other state or federal recall compensation remedy.

**Source:** Laws 2018, LB909, § 115.

**ARTICLE 15**

**DEPARTMENT OF MOTOR VEHICLES**

**Cross References**

For other provisions for state administrative departments, see Chapter 81, article 1.

**Section**

- 60-1501. Director; qualifications.
- 60-1502. Director; oath; bond or insurance.
- 60-1503. Employment of personnel; technical advisors.
- 60-1504. Seal; certified copies of records as evidence.
- 60-1505. Vehicle Title and Registration System Replacement and Maintenance Cash Fund; created; use; investment.
- 60-1506. Registration and titling; records; copy or extract provided; electronic access; fee.
- 60-1507. Electronic dealer services system; licensed dealer; participation; service fee; powers of director.
- 60-1508. Vehicle Title and Registration System; legislative intent; collection, storage, and transfer of data on vehicle titles and registrations; department; duties; implementation dates.
- 60-1509. Operator’s license services system; build and maintain; Operator’s License Services System Replacement and Maintenance Fund; created; use; investment.
- 60-1510. Repealed. Laws 1985, LB 21, § 1.



## Section

- 60-1511. Repealed. Laws 1985, LB 21, § 1.  
 60-1512. Repealed. Laws 1985, LB 21, § 1.  
 60-1513. Department of Motor Vehicles Cash Fund; created; use; investment.  
 60-1514. Repealed. Laws 1995, LB 467, § 21.  
 60-1515. Department of Motor Vehicles Cash Fund; use; legislative intent.  
 60-1516. Repealed. Laws 2005, LB 1, § 11.

**60-1501 Director; qualifications.**

The Director of Motor Vehicles at the time of his appointment and qualification shall (a) be a citizen of the United States and a resident of the State of Nebraska, (b) have been a qualified voter in the state for a period of at least five years preceding his appointment, and (c) not be less than thirty years of age.

**Source:** Laws 1957, c. 366, § 54, p. 1284.

**60-1502 Director; oath; bond or insurance.**

The Director of Motor Vehicles shall take the oath as provided by law and be bonded or insured as required by section 11-201.

**Source:** Laws 1957, c. 366, § 55, p. 1284; Laws 1978, LB 653, § 22; Laws 2004, LB 884, § 33.

**60-1503 Employment of personnel; technical advisors.**

The Director of Motor Vehicles shall have authority to employ such personnel, including legal, and technical advisors as may be necessary to carry out the duties of his office.

**Source:** Laws 1957, c. 366, § 56, p. 1284.

The Director of Motor Vehicles has the authority to employ personnel, including legal personnel and technical advisors, as may be necessary to carry out the duties of his office. *Koepp v. Jensen*, 230 Neb. 489, 432 N.W.2d 237 (1988).

The authority of the Director of Motor Vehicles to delegate her implied consent revocation duties under section 39-669.16 (transferred to section 60-498.02) is fairly implied by this section. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

**60-1504 Seal; certified copies of records as evidence.**

The Director of Motor Vehicles shall adopt a seal. Copies of all records or other instruments in the department, when certified by the director as true copies and bearing the seal thereof, shall be received in any court as prima facie evidence of the original records or instruments.

**Source:** Laws 1957, c. 366, § 57, p. 1284.

**60-1505 Vehicle Title and Registration System Replacement and Maintenance Cash Fund; created; use; investment.**

The Vehicle Title and Registration System Replacement and Maintenance Cash Fund is hereby created. The fund shall be administered by the Department of Motor Vehicles. Revenue credited to the fund shall include fees collected by the department from participation in any multistate electronic data security program, except as otherwise specifically provided by law, and funds transferred as provided in section 60-3,186. The fund shall be used by the department to pay for costs associated with the acquisition, implementation, maintenance, support, upgrades, and replacement of the Vehicle Title and Registration System. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2014, LB906, § 2; Laws 2016, LB977, § 28; Laws 2017, LB263, § 75.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-1506 Registration and titling; records; copy or extract provided; electronic access; fee.**

(1) The Department of Motor Vehicles shall keep a record of each motor vehicle, trailer, motorboat, all-terrain vehicle, utility-type vehicle, snowmobile, and minibike registered or titled in this state, alphabetically by name of the owner, with cross reference in each instance to the registration number assigned to such motor vehicle, trailer, motorboat, all-terrain vehicle, utility-type vehicle, snowmobile, and minibike. The record may be destroyed by any public officer having custody of it after three years from the date of its issuance.

(2) The department shall issue a copy of the record of a registered or titled motor vehicle, trailer, motorboat, all-terrain vehicle, utility-type vehicle, snowmobile, or minibike to any person after receiving from the person the name on the registration or certificate of title, the license plate number, the vehicle identification or other type of identification number, or the title number of a motor vehicle, trailer, motorboat, all-terrain vehicle, utility-type vehicle, snowmobile, or minibike, if the person provides to the department verification of identity and purpose pursuant to section 60-2906 or 60-2907. A fee of one dollar shall be charged for the copy. An extract of the entire file of motor vehicles, trailers, motorboats, all-terrain vehicles, utility-type vehicles, snowmobiles, and minibikes registered or titled in the state or updates to the entire file may be provided to a person upon payment of a fee of eighteen dollars per thousand records. Any fee received by the department pursuant to this subsection shall be deposited into the Department of Motor Vehicles Cash Fund.

(3) The record of each motor vehicle, trailer, motorboat, all-terrain vehicle, utility-type vehicle, snowmobile, or minibike registration or title maintained by the department pursuant to this section may be made available electronically through the portal established under section 84-1204 so long as the Uniform Motor Vehicle Records Disclosure Act is not violated. There shall be a fee of one dollar per record for individual records and for data-to-data requests for multiple motor vehicle, trailer, motorboat, all-terrain vehicle, utility-type vehicle, snowmobile, or minibike title and registration records. For bulk record requests of multiple motor vehicle, trailer, motorboat, all-terrain vehicle, utility-type vehicle, snowmobile, or minibike titles and registrations selected on the basis of criteria of the individual making the request, there shall be a fee of fifty dollars for every request under two thousand records, and a fee of eighteen dollars per one thousand records for any number of records over two thousand, plus a reasonable programming fee not to exceed five hundred twenty dollars. All fees collected pursuant to this subsection for electronic access to records through the portal shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the department.

**Source:** Laws 2005, LB 274, § 161; Laws 2008, LB756, § 13; Laws 2012, LB719, § 4; R.S.Supp.,2016, § 60-3,161; Laws 2017, LB263, § 76.

## Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

**60-1507 Electronic dealer services system; licensed dealer; participation; service fee; powers of director.**

(1) The Department of Motor Vehicles shall develop an electronic dealer services system for implementation as provided in subsection (7) of this section. The Director of Motor Vehicles shall approve a licensed dealer as defined in sections 60-119.02 and 60-335.01 for participation in the system. A licensed dealer may voluntarily participate in the system and provide titling and registration services. A licensed dealer who chooses to participate may collect from a purchaser of a vehicle as defined in section 60-136, who also chooses to participate, all appropriate certificate of title fees, notation of lien fees, registration fees, motor vehicle taxes and fees, and sales taxes. All such fees and taxes collected shall be remitted to the appropriate county treasurer or the department as provided in the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, and the Nebraska Revenue Act of 1967.

(2) In addition to the fees and taxes described in subsection (1) of this section, a participating licensed dealer may charge and collect a service fee not to exceed fifty dollars from a purchaser electing to use the electronic dealer services system.

(3) The department shall provide an approved participating licensed dealer with access to the electronic dealer services system by a method determined by the director. An approved licensed dealer who chooses to participate shall use the system to electronically submit title, registration, and lien information to the Vehicle Title and Registration System maintained by the department. License plates, registration certificates, and certificates of title shall be delivered as provided under the Motor Vehicle Certificate of Title Act and the Motor Vehicle Registration Act.

(4) The director may remove a licensed dealer's authority to participate in the electronic dealer services system for any violation of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Industry Regulation Act, the Motor Vehicle Registration Act, or the Nebraska Revenue Act of 1967, for failure to timely remit fees and taxes collected under this section, or for any other conduct the director deems to have or will have an adverse effect on the public or any governmental entity.

(5) An approved licensed dealer participating in the electronic dealer services system shall not release, disclose, use, or share personal or sensitive information contained in the records accessible through the electronic dealer services system as prohibited under the Uniform Motor Vehicle Records Disclosure Act, except that a licensed dealer may release, disclose, use, or share such personal or sensitive information when necessary to fulfill the requirements of the electronic dealer services system as approved by the department. An approved licensed dealer participating in the electronic dealer services system shall be responsible for ensuring that such licensed dealer's employees and agents comply with the Uniform Motor Vehicle Records Disclosure Act.

(6) The department may adopt and promulgate rules and regulations governing the eligibility for approval and removal of licensed dealers to participate in the electronic dealer services system, the procedures and requirements necessary to implement and maintain such system, and the procedures and requirements for approved licensed dealers participating in such system.

(7) The department shall implement the electronic dealer services system on a date to be determined by the director but not later than January 1, 2021.

**Source:** Laws 2017, LB263, § 77; Laws 2018, LB909, § 119.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.

Motor Vehicle Industry Regulation Act, see section 60-1401.

Motor Vehicle Registration Act, see section 60-301.

Nebraska Revenue Act of 1967, see section 77-2701.

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

**60-1508 Vehicle Title and Registration System; legislative intent; collection, storage, and transfer of data on vehicle titles and registrations; department; duties; implementation dates.**

(1) It is the intent of the Legislature that the Department of Motor Vehicles maintain and further improve the Vehicle Title and Registration System which is the statewide system for the collection, storage, and transfer of data on vehicle titles and registrations as described in section 60-1505.

(2) The department shall provide for technological updates to electronic certificates of title. The Director of Motor Vehicles shall designate an implementation date for the updates which date is on or before January 1, 2021.

(3) The department shall provide for an electronic reporting system for salvage and junked motorboats and vehicles. The director shall designate an implementation date for the system which date is on or before January 1, 2021.

(4) The department shall provide for the use of identification numbers for trailers which do not have a certificate of title. The director shall designate an implementation date for such use which date is on or before January 1, 2021.

**Source:** Laws 2018, LB909, § 118.

**60-1509 Operator's license services system; build and maintain; Operator's License Services System Replacement and Maintenance Fund; created; use; investment.**

(1) The Department of Motor Vehicles shall build and maintain a new operator's license services system for the issuance of operators' licenses and state identification cards. The Director of Motor Vehicles shall designate an implementation date for the new system which date is on or before July 1, 2032.

(2) The Operator's License Services System Replacement and Maintenance Fund is created. The fund shall consist of amounts credited under subsection (8) of section 60-483. The fund shall be used for the building, implementation, and maintenance of a new operator's license services system for the issuance of operators' licenses and state identification cards.

(3) Any money in the Operator's License Services System Replacement and Maintenance 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 2021, LB106, § 2.

Effective date April 8, 2021.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-1510 Repealed. Laws 1985, LB 21, § 1.**

**60-1511 Repealed. Laws 1985, LB 21, § 1.**

**60-1512 Repealed. Laws 1985, LB 21, § 1.**

**60-1513 Department of Motor Vehicles Cash Fund; created; use; investment.**

The Department of Motor Vehicles Cash Fund is hereby created. The fund shall be administered by the Director of Motor Vehicles. In addition to money credited or remitted to the fund, the fund may also receive reimbursement from counties. The fund shall be used by the Department of Motor Vehicles to carry out its duties as deemed necessary by the Director of Motor Vehicles, except that transfers from the fund to the General Fund or the Vehicle Title and Registration System Replacement and Maintenance Cash Fund may be made at the direction of the Legislature. Any money in the Department of Motor Vehicles Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer five million three hundred twenty-five thousand dollars from the Department of Motor Vehicles Cash Fund to the Vehicle Title and Registration System Replacement and Maintenance Cash Fund on or before June 30, 2017, as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 1993, LB 491, § 17; Laws 1994, LB 1066, § 48; Laws 1995, LB 467, § 16; Laws 1996, LB 1191, § 1; Laws 2003, LB 209, § 16; Laws 2006, LB 1061, § 9; Laws 2007, LB322, § 11; Laws 2016, LB957, § 3; Laws 2021, LB271, § 14.

Operative date July 1, 2022.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-1514 Repealed. Laws 1995, LB 467, § 21.**

**60-1515 Department of Motor Vehicles Cash Fund; use; legislative intent.**

(1) The Legislature hereby finds and declares that a statewide system for the collection, storage, and transfer of data on vehicle titles and registration and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in vehicle titling and registration. The Legislature hereby finds and declares that the electronic issuance of operators' licenses and state identification cards using a digital system as described in section 60-484.01 and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in issuing operators' licenses and state identification cards.

(2) It is therefor the intent of the Legislature that the Department of Motor Vehicles shall use a portion of the fees appropriated by the Legislature to the Department of Motor Vehicles Cash Fund as follows:

(a) To pay for the cost of issuing motor vehicle titles and registrations on a system designated by the department. The costs shall include, but not be limited to, software and software maintenance, programming, processing charges, and equipment including such terminals, printers, or other devices as deemed necessary by the department after consultation with the county to support the issuance of motor vehicle titles and registrations. The costs shall not include the cost of county personnel or physical facilities provided by the counties;

(b) To fund the centralization of renewal notices for motor vehicle registration and to furnish to the counties the certificate of registration forms specified in section 60-390. The certificate of registration form shall be prescribed by the department;

(c) To pay for the costs of an operator’s license system as specified in sections 60-484.01 and 60-4,119 and designated by the department. The costs shall be limited to such terminals, printers, software, programming, and other equipment or devices as deemed necessary by the department to support the issuance of such licenses and state identification cards in the counties and by the department; and

(d) To pay for the motor vehicle insurance database created under section 60-3,136.

**Source:** Laws 1993, LB 491, § 19; Laws 1995, LB 467, § 17; Laws 2001, LB 574, § 31; Laws 2002, LB 488, § 6; Laws 2005, LB 274, § 258; Laws 2013, LB207, § 6.

**60-1516 Repealed. Laws 2005, LB 1, § 11.**

**ARTICLE 16**

**CABIN TRAILERS**

- Section
- 60-1601. Repealed. Laws 1981, LB 168, § 18.
- 60-1601.01. Repealed. Laws 1981, LB 168, § 18.
- 60-1602. Repealed. Laws 1981, LB 168, § 18.
- 60-1603. Repealed. Laws 1981, LB 168, § 18.
- 60-1604. Repealed. Laws 1981, LB 168, § 18.
- 60-1605. Repealed. Laws 1981, LB 168, § 18.
- 60-1606. Repealed. Laws 1972, LB 1100, § 7.
- 60-1606.01. Repealed. Laws 1972, LB 1100, § 7.
- 60-1606.02. Repealed. Laws 1972, LB 1100, § 7.
- 60-1606.03. Repealed. Laws 1972, LB 1100, § 7.
- 60-1607. Repealed. Laws 1972, LB 1100, § 7.
- 60-1608. Repealed. Laws 1981, LB 168, § 18.
- 60-1609. Transferred to section 77-3706.
- 60-1609.01. Transferred to section 77-3707.
- 60-1610. Repealed. Laws 1981, LB 168, § 18.
- 60-1611. Transferred to section 77-3708.
- 60-1612. Transferred to section 77-3709.
- 60-1613. Transferred to section 77-3710.

**60-1601 Repealed. Laws 1981, LB 168, § 18.**

**60-1601.01 Repealed. Laws 1981, LB 168, § 18.**

**60-1602 Repealed. Laws 1981, LB 168, § 18.**

**60-1603 Repealed. Laws 1981, LB 168, § 18.**

- 60-1604 Repealed. Laws 1981, LB 168, § 18.**
- 60-1605 Repealed. Laws 1981, LB 168, § 18.**
- 60-1606 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1606.01 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1606.02 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1606.03 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1607 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1608 Repealed. Laws 1981, LB 168, § 18.**
- 60-1609 Transferred to section 77-3706.**
- 60-1609.01 Transferred to section 77-3707.**
- 60-1610 Repealed. Laws 1981, LB 168, § 18.**
- 60-1611 Transferred to section 77-3708.**
- 60-1612 Transferred to section 77-3709.**
- 60-1613 Transferred to section 77-3710.**

#### ARTICLE 17

#### MOTOR VEHICLE INSPECTION

##### Section

- 60-1701. Repealed. Laws 1981, LB 35, § 1.
- 60-1701.01. Repealed. Laws 1981, LB 35, § 1.
- 60-1702. Repealed. Laws 1981, LB 35, § 1.
- 60-1703. Repealed. Laws 1981, LB 35, § 1.
- 60-1704. Repealed. Laws 1981, LB 35, § 1.
- 60-1705. Repealed. Laws 1981, LB 35, § 1.
- 60-1706. Repealed. Laws 1981, LB 35, § 1.
- 60-1707. Repealed. Laws 1981, LB 35, § 1.
- 60-1708. Repealed. Laws 1986, LB 731, § 4.

- 60-1701 Repealed. Laws 1981, LB 35, § 1.**
- 60-1701.01 Repealed. Laws 1981, LB 35, § 1.**
- 60-1702 Repealed. Laws 1981, LB 35, § 1.**
- 60-1703 Repealed. Laws 1981, LB 35, § 1.**
- 60-1704 Repealed. Laws 1981, LB 35, § 1.**
- 60-1705 Repealed. Laws 1981, LB 35, § 1.**
- 60-1706 Repealed. Laws 1981, LB 35, § 1.**
- 60-1707 Repealed. Laws 1981, LB 35, § 1.**
- 60-1708 Repealed. Laws 1986, LB 731, § 4.**

## ARTICLE 18

## CAMPER UNITS

## Section

- 60-1801. Camper unit, defined.
- 60-1802. Permit required.
- 60-1803. Permit; application; contents; fee.
- 60-1804. Department of Motor Vehicles; validation decal; furnish.
- 60-1805. Permit; renewal; fee.
- 60-1806. Repealed. Laws 1997, LB 271, § 57.
- 60-1807. Permit; renewal; issuance; receipt required.
- 60-1808. Violations; penalty.

**60-1801 Camper unit, defined.**

As used in sections 60-1801 to 60-1808, unless the context otherwise requires, camper unit means any structure designed and intended to be placed on a truck and to provide living quarters and which may be removed from a truck without dismantling or damage when ordinary care is exercised. Camper unit does not include a recreational vehicle as defined in section 60-347, or a mobile home as defined in section 77-3701.

**Source:** Laws 1969, c. 627, § 1, p. 2526; Laws 1981, LB 168, § 12; Laws 2005, LB 274, § 259.

**60-1802 Permit required.**

Every owner, except dealers or manufacturers, of a camper unit which is located within this state for a period of thirty days or more shall obtain a permit therefor in the manner prescribed by sections 60-1801 to 60-1808. No refund of the permit fee shall be made after a permit has been issued. The permit shall not be transferred to a new owner, and in case of transfer of ownership of such camper unit, a new permit must be obtained in the same manner as the original permit was obtained.

**Source:** Laws 1969, c. 627, § 2, p. 2526.

**60-1803 Permit; application; contents; fee.**

Every owner of a camper unit shall make application for a permit to the county treasurer of the county in which such owner resides or is domiciled or conducts a bona fide business, or if such owner is not a resident of this state, such application shall be made to the county treasurer of the county in which such owner actually lives or conducts a bona fide business, except as otherwise expressly provided. Any person, firm, association, or corporation who is neither a resident of this state nor domiciled in this state, but who desires to obtain a permit for a camper unit owned by such person, firm, association, or corporation, may register the same in any county of this state. The application shall contain a statement of the name, post office address, and place of residence of the applicant, a description of the camper unit, including the name of the maker, the number, if any, affixed or assigned thereto by the manufacturer, the weight, width, and length of the vehicle, the year, the model, and the trade name or other designation given thereto by the manufacturer, if any. Camper unit permits required by sections 60-1801 to 60-1808 shall be issued by the county treasurer in the same manner as registration certificates as provided in



the Motor Vehicle Registration Act except as otherwise provided in sections 60-1801 to 60-1808. Every applicant for a permit, at the time of making such application, shall exhibit to the county treasurer evidence of ownership of such camper unit. Contemporaneously with such application, the applicant shall pay a permit fee in the amount of two dollars which shall be distributed in the same manner as all other motor vehicle license fees. Upon proper application being made and the payment of the permit fee, the applicant shall be issued a permit.

**Source:** Laws 1969, c. 627, § 3, p. 2526; Laws 1993, LB 112, § 40; Laws 1995, LB 37, § 11; Laws 1997, LB 271, § 34; Laws 2005, LB 274, § 260; Laws 2012, LB801, § 95.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**60-1804 Department of Motor Vehicles; validation decal; furnish.**

The Department of Motor Vehicles shall design, procure, and furnish to the county treasurers a validation decal which may be attached to the camper unit as evidence that a permit has been obtained. Each county treasurer shall furnish a validation decal to the person obtaining the permit and such decal shall be attached to the camper unit so as to be clearly visible from the outside of the unit.

**Source:** Laws 1969, c. 627, § 4, p. 2527; Laws 2005, LB 274, § 261.

**60-1805 Permit; renewal; fee.**

Such permit shall be renewed annually in the same manner and upon the payment of the same fee as provided for original issuance. Such renewal shall become due on the first day of January of each year and delinquent on March 1 of each year.

**Source:** Laws 1969, c. 627, § 5, p. 2527; Laws 2004, LB 560, § 40.

**60-1806 Repealed. Laws 1997, LB 271, § 57.**

**60-1807 Permit; renewal; issuance; receipt required.**

In issuing permits or renewals under sections 60-1801 to 60-1808, the county treasurer shall neither receive nor accept such application nor permit fee nor issue any permit for any such camper unit unless the applicant first exhibits proof by receipt or otherwise (1) that he or she has paid all applicable taxes and fees upon such camper unit based on the computation thereof made in the year preceding the year for which such application for permit is made, (2) that he or she was the owner of another camper unit or other motor vehicles on which he or she paid the taxes and fees during such year, or (3) that he or she owned no camper unit or other motor vehicle upon which taxes and fees might have been imposed during such year.

**Source:** Laws 1969, c. 627, § 7, p. 2528; Laws 1997, LB 271, § 35; Laws 2005, LB 274, § 262; Laws 2012, LB801, § 96.

**60-1808 Violations; penalty.**

Any person violating any of the provisions of sections 60-1801 to 60-1808 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1969, c. 627, § 8, p. 2528; Laws 1977, LB 39, § 99.

## ARTICLE 19

## ABANDONED MOTOR VEHICLES

## Section

60-1901.	Abandoned vehicle, defined.
60-1902.	Abandoned vehicle; title; vest in local authority or state agency; when.
60-1903.	Local authorities or state agency; powers and duties.
60-1903.01.	Law enforcement agency; powers and duties.
60-1903.02.	Law enforcement agency; authority to remove abandoned or trespassing vehicle; private towing service; notice; contents.
60-1904.	Custody; who entitled.
60-1905.	Proceeds of sale; disposition.
60-1906.	Liability for removal.
60-1907.	Person cannot abandon a vehicle.
60-1908.	Destroy, deface, or remove parts; unlawful; exception; violation; penalty.
60-1909.	Costs of removal and storage; last-registered owner; liable.
60-1910.	Rules and regulations.
60-1911.	Violations; penalty.

**60-1901 Abandoned vehicle, defined.**

(1) A motor vehicle is an abandoned vehicle:

(a) If left unattended, with no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six hours on any public property;

(b) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(c) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(d) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(e) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner and lienholder under section 60-1903.01; or

(f) If removed from private property by a municipality pursuant to a municipal ordinance.

(2) An all-terrain vehicle, a utility-type vehicle, or a minibike is an abandoned vehicle:

(a) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(b) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(c) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(d) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner and lienholder under section 60-1903.01; or

(e) If removed from private property by a municipality pursuant to a municipal ordinance.

(3) A mobile home is an abandoned vehicle if left in place on private property for more than thirty days after a local governmental unit, pursuant to an ordinance or resolution, has sent a certified letter to each of the last-registered owners and posted a notice on the mobile home, stating that the mobile home is subject to sale or auction or vesting of title as set forth in section 60-1903.

(4) For purposes of this section:

(a) Mobile home means a movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit, and shall include a manufactured home as defined in section 71-4603. Mobile home does not include a mobile home or manufactured home for which an affidavit of affixture has been recorded pursuant to section 60-169;

(b) Public property means any public right-of-way, street, highway, alley, or park or other state, county, or municipally owned property; and

(c) Private property means any privately owned property which is not included within the definition of public property.

(5) No motor vehicle subject to forfeiture under section 28-431 shall be an abandoned vehicle under this section.

**Source:** Laws 1971, LB 295, § 1; Laws 1999, LB 90, § 1; Laws 2004, LB 560, § 41; Laws 2005, LB 274, § 263; Laws 2009, LB60, § 1; Laws 2010, LB650, § 46; Laws 2014, LB1044, § 1; Laws 2021, LB616, § 1.

Effective date August 28, 2021.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**60-1902 Abandoned vehicle; title; vest in local authority or state agency; when.**

If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid In Transit stickers issued pursuant to section 60-376 affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of five hundred dollars or less, title shall immediately vest in the local authority or state agency having jurisdiction thereof as provided in section 60-1904. Any certificate of title issued under this section to the local authority or state agency shall be issued at no cost to such authority or agency.

**Source:** Laws 1971, LB 295, § 2; Laws 1974, LB 689, § 1; Laws 1975, LB 131, § 1; Laws 1999, LB 90, § 2; Laws 2005, LB 274, § 264; Laws 2021, LB616, § 2.

Effective date August 28, 2021.

**60-1903 Local authorities or state agency; powers and duties.**

(1) Except for vehicles governed by section 60-1902, the local authority or state agency having custody of an abandoned vehicle shall make an inquiry concerning the last-registered owner of such vehicle as follows:

(a) Abandoned vehicle with license plates affixed, to the jurisdiction which issued such license plates; or

(b) Abandoned vehicle with no license plates affixed, to the Department of Motor Vehicles.

(2) The local authority or state agency shall notify the last-registered owner, if any, and any lienholder, if any, within fifteen business days that the vehicle in question has been determined to be an abandoned vehicle and that, if unclaimed, either (a) it will be sold or will be offered at public auction after five days from the date such notice was mailed or (b) title will vest in the local authority or state agency thirty days after the date such notice was mailed. If the agency described in subdivision (1)(a) or (b) of this section also notifies the local authority or state agency that a lien or mortgage exists, such notice shall also be sent to the lienholder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle.

(3) Title to an abandoned vehicle, if unclaimed, shall vest in the local authority or state agency (a) five days after the date the notice is mailed if the vehicle will be sold or offered at public auction under subdivision (2)(a) of this section, (b) thirty days after the date the notice is mailed if the local authority or state agency will retain the vehicle, or (c) if the last-registered owner cannot be ascertained, when notice of such fact is received.

(4) After title to the abandoned vehicle vests pursuant to subsection (3) of this section, the local authority or state agency may retain for use, sell, or auction the abandoned vehicle. If the local authority or state agency has determined that the vehicle should be retained for use, the local authority or state agency shall, at the same time that the notice, if any, is mailed, publish in a newspaper of general circulation in the jurisdiction an announcement that the local authority or state agency intends to retain the abandoned vehicle for its use and that title will vest in the local authority or state agency thirty days after the publication.

**Source:** Laws 1971, LB 295, § 3; Laws 1999, LB 90, § 3; Laws 2021, LB616, § 3.

Effective date August 28, 2021.

**60-1903.01 Law enforcement agency; powers and duties.**

A state or local law enforcement agency which has custody of a motor vehicle for investigatory purposes and has no further need to keep it in custody shall send a certified letter to each of the last-registered owners, if any, and lienholders, if any, within fifteen calendar days stating that the vehicle is in the custody of the law enforcement agency, that the vehicle is no longer needed for law enforcement purposes, and that after thirty days the agency will dispose of the vehicle. This section shall not apply to motor vehicles subject to forfeiture under section 28-431. No storage fees shall be assessed against the registered owner of a motor vehicle held in custody for investigatory purposes under this section unless the registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor related to the offense for which the law enforcement agency took the vehicle into custody. If a registered owner or the person in possession of the vehicle when it

is taken into custody is charged with a felony or misdemeanor but is not convicted, the registered owner shall be entitled to a refund of the storage fees.

**Source:** Laws 1999, LB 90, § 4; Laws 2021, LB616, § 4.  
Effective date August 28, 2021.

**60-1903.02 Law enforcement agency; authority to remove abandoned or trespassing vehicle; private towing service; notice; contents.**

(1) A law enforcement agency is authorized to remove an abandoned or trespassing vehicle from private property upon the request of the private property owner on whose property the vehicle is located and upon information indicating that the vehicle is an abandoned or trespassing vehicle. After removal, the law enforcement agency with custody of the vehicle shall follow the procedures in sections 60-1902 and 60-1903.

(2) A law enforcement agency is authorized to contact a private towing service in order to remove an abandoned or trespassing vehicle from private property upon the request of the private property owner on whose property the vehicle is located and upon information indicating that the vehicle is an abandoned or trespassing vehicle. A vehicle towed away under this subsection is subject to sections 52-601.01 to 52-605 and 60-2410 by the private towing service which towed the vehicle.

(3) A private property owner is authorized to remove or cause the removal of an abandoned or trespassing vehicle from such property and may contact a private towing service for such removal. A private towing service that tows the vehicle shall notify, within twenty-four hours, the designated law enforcement agency in the jurisdiction from which the vehicle is removed and provide the registration plate number, the vehicle identification number, if available, the make, model, and color of the vehicle, and the name of the private towing service and the location, if applicable, where the private towing service is storing the vehicle. A vehicle towed away under this subsection is subject to sections 52-601.01 to 52-605 and 60-2410 by the private towing service that towed the vehicle.

(4) For purposes of this section, a trespassing vehicle is a vehicle that is parked without permission on private property that is not typically made available for public parking.

**Source:** Laws 2018, LB275, § 3.

**60-1904 Custody; who entitled.**

If a state agency caused an abandoned vehicle described in subdivision (1)(e) or (2)(d) of section 60-1901 to be removed from public property, the state agency shall be entitled to custody of the vehicle. If a state agency caused an abandoned vehicle described in subdivision (1)(a), (b), (c), or (d) or (2)(a), (b), or (c) of section 60-1901 to be removed from public property, the state agency shall deliver the vehicle to the local authority which shall have custody. The local authority entitled to custody of an abandoned vehicle shall be the county in which the vehicle was abandoned or, if abandoned in a city or village, the city or village in which the vehicle was abandoned.

**Source:** Laws 1971, LB 295, § 4; Laws 1977, LB 116, § 1; Laws 1999, LB 90, § 5; Laws 2004, LB 560, § 42.

**60-1905 Proceeds of sale; disposition.**

Any proceeds from the sale of an abandoned vehicle less any expenses incurred by the local authority or state agency shall be held by the local authority or state agency without interest, for the benefit of the owner or lienholders of such vehicle for a period of two years. If not claimed within such two-year period, the proceeds shall be paid into the general fund of the local authority entitled to custody under section 60-1904 or the state General Fund if a state agency is entitled to custody under section 60-1904.

**Source:** Laws 1971, LB 295, § 5; Laws 1999, LB 90, § 6.

**60-1906 Liability for removal.**

Neither the owner, owner's agent, owner's employee, lessee, nor occupant of the premises from which any abandoned vehicle is removed, nor the state, city, village, or county, shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the state, city, village, or county or its contractual agent, while in the possession of a private towing service, or as a result of any subsequent disposition.

**Source:** Laws 1971, LB 295, § 6; Laws 1999, LB 90, § 7; Laws 2018, LB275, § 4.

**60-1907 Person cannot abandon a vehicle.**

No person shall cause any vehicle to be an abandoned vehicle as described in subdivision (1)(a), (b), (c), or (d) or (2)(a), (b), or (c) of section 60-1901.

**Source:** Laws 1971, LB 295, § 7; Laws 1999, LB 90, § 8; Laws 2004, LB 560, § 43.

**60-1908 Destroy, deface, or remove parts; unlawful; exception; violation; penalty.**

No person other than one authorized by the appropriate local authority or state agency shall destroy, deface, or remove any part of a vehicle which is left unattended on a highway or other public place without license plates affixed or which is abandoned. Anyone violating this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1971, LB 295, § 8; Laws 1977, LB 39, § 100; Laws 1999, LB 90, § 9.

**60-1909 Costs of removal and storage; last-registered owner; liable.**

The last-registered owner of an abandoned vehicle shall be liable to the local authority or state agency for the costs of removal and storage of such vehicle.

**Source:** Laws 1971, LB 295, § 9; Laws 1999, LB 90, § 10.

**60-1910 Rules and regulations.**

The Director of Motor Vehicles shall adopt and promulgate rules and regulations providing for such forms and procedures as are necessary or desirable to effectuate the provisions of sections 60-1901 to 60-1911. Such rules and regulations may include procedures for the removal and disposition of vehicle

identification numbers of abandoned vehicles, forms for local records for abandoned vehicles, and inquiries relating to ownership of such vehicles.

**Source:** Laws 1971, LB 295, § 10; Laws 1999, LB 90, § 11; Laws 2018, LB275, § 5.

**60-1911 Violations; penalty.**

Except as provided in section 60-1908, any person violating the provisions of sections 60-1901 to 60-1911 shall be guilty of a Class II misdemeanor.

**Source:** Laws 1971, LB 295, § 11; Laws 1977, LB 39, § 101; Laws 1999, LB 90, § 12; Laws 2018, LB275, § 6.

**ARTICLE 20  
SNOWMOBILES**

Section	
60-2001.	Transferred to section 60-6,320.
60-2002.	Transferred to section 60-6,321.
60-2003.	Transferred to section 60-6,322.
60-2004.	Transferred to section 60-6,323.
60-2005.	Transferred to section 60-6,324.
60-2006.	Transferred to section 60-6,325.
60-2007.	Transferred to section 60-6,326.
60-2008.	Transferred to section 60-6,327.
60-2009.	Transferred to section 60-6,328.
60-2009.01.	Transferred to section 60-6,329.
60-2010.	Transferred to section 60-6,330.
60-2010.01.	Transferred to section 60-6,331.
60-2010.02.	Transferred to section 60-6,332.
60-2011.	Transferred to section 60-6,333.
60-2012.	Repealed. Laws 1977, LB 230, § 19.
60-2012.01.	Transferred to section 60-6,334.
60-2013.	Transferred to section 60-6,335.
60-2014.	Transferred to section 60-6,336.
60-2015.	Transferred to section 60-6,337.
60-2016.	Transferred to section 60-6,338.
60-2017.	Transferred to section 60-6,339.
60-2018.	Transferred to section 60-6,340.
60-2018.01.	Transferred to section 60-6,341.
60-2019.	Transferred to section 60-6,344.
60-2020.	Transferred to section 60-6,342.
60-2021.	Transferred to section 60-6,343.
60-2022.	Transferred to section 60-6,345.
60-2023.	Transferred to section 60-6,346.

**60-2001 Transferred to section 60-6,320.**

**60-2002 Transferred to section 60-6,321.**

**60-2003 Transferred to section 60-6,322.**

**60-2004 Transferred to section 60-6,323.**

**60-2005 Transferred to section 60-6,324.**

**60-2006 Transferred to section 60-6,325.**

**60-2007 Transferred to section 60-6,326.**

- 60-2008 Transferred to section 60-6,327.  
 60-2009 Transferred to section 60-6,328.  
 60-2009.01 Transferred to section 60-6,329.  
 60-2010 Transferred to section 60-6,330.  
 60-2010.01 Transferred to section 60-6,331.  
 60-2010.02 Transferred to section 60-6,332.  
 60-2011 Transferred to section 60-6,333.  
 60-2012 Repealed. Laws 1977, LB 230, § 19.  
 60-2012.01 Transferred to section 60-6,334.  
 60-2013 Transferred to section 60-6,335.  
 60-2014 Transferred to section 60-6,336.  
 60-2015 Transferred to section 60-6,337.  
 60-2016 Transferred to section 60-6,338.  
 60-2017 Transferred to section 60-6,339.  
 60-2018 Transferred to section 60-6,340.  
 60-2018.01 Transferred to section 60-6,341.  
 60-2019 Transferred to section 60-6,344.  
 60-2020 Transferred to section 60-6,342.  
 60-2021 Transferred to section 60-6,343.  
 60-2022 Transferred to section 60-6,345.  
 60-2023 Transferred to section 60-6,346.

## ARTICLE 21

### MINIBIKES OR MOTORCYCLES

#### (a) GENERAL PROVISIONS

- Section  
 60-2101. Repealed. Laws 1972, LB 1196, § 11.  
 60-2101.01. Transferred to section 60-6,347.  
 60-2102. Transferred to section 60-6,348.  
 60-2103. Transferred to section 60-6,349.  
 60-2104. Transferred to section 60-6,350.  
 60-2105. Transferred to section 60-6,351.  
 60-2106. Transferred to section 60-678.  
 60-2107. Transferred to section 60-6,352.  
 60-2108. Transferred to section 60-6,353.

#### (b) MOTORCYCLE SAFETY EDUCATION

- 60-2109. Transferred to section 60-2121.  
 60-2110. Transferred to section 60-2125.  
 60-2111. Transferred to section 60-2126.



Section	
60-2112.	Transferred to section 60-2127.
60-2113.	Transferred to section 60-2128.
60-2114.	Transferred to section 60-2130.
60-2115.	Transferred to section 60-2131.
60-2116.	Transferred to section 60-2132.
60-2117.	Transferred to section 60-2137.
60-2118.	Transferred to section 60-2133.
60-2118.01.	Transferred to section 60-2135.
60-2119.	Transferred to section 60-2139.
60-2120.	Act, how cited.
60-2121.	Terms, defined.
60-2122.	Repealed. Laws 2002, LB 93, § 27.
60-2123.	Repealed. Laws 2002, LB 93, § 27.
60-2124.	Repealed. Laws 2002, LB 93, § 27.
60-2125.	Motorcycle safety courses; requirements.
60-2126.	Motorcycle safety course; approval by director; application; contents; certified motorcycle safety instructor required; fee; course audits.
60-2127.	Motorcycle safety instructors; certificate; requirements; renewal; person certified by another state; how treated.
60-2128.	Motorcycle safety instructor preparation course; department; duties.
60-2129.	Motorcycle trainers; requirements; certificates; person certified by another state; how treated.
60-2130.	Motorcycle safety instructor or motorcycle trainer; certificate; term; renewal.
60-2131.	Certification of motorcycle safety course, motorcycle safety instructor's certificate, or motorcycle trainer's certificate; denial, suspension, or revocation; procedure.
60-2132.	Repealed. Laws 2011, LB 170, § 17.
60-2132.01.	Motorcycle Safety Education Fund; transfers.
60-2133.	Repealed. Laws 2011, LB 170, § 17.
60-2134.	Repealed. Laws 2011, LB 170, § 17.
60-2135.	Repealed. Laws 2011, LB 170, § 17.
60-2136.	Repealed. Laws 2011, LB 170, § 17.
60-2137.	Repealed. Laws 2011, LB 170, § 17.
60-2138.	Repealed. Laws 2011, LB 170, § 17.
60-2139.	Rules and regulations.
60-2140.	Repealed. Laws 1989, LB 25, § 3.
60-2141.	Repealed. Laws 1989, LB 25, § 3.

## (a) GENERAL PROVISIONS

**60-2101 Repealed. Laws 1972, LB 1196, § 11.**

**60-2101.01 Transferred to section 60-6,347.**

**60-2102 Transferred to section 60-6,348.**

**60-2103 Transferred to section 60-6,349.**

**60-2104 Transferred to section 60-6,350.**

**60-2105 Transferred to section 60-6,351.**

**60-2106 Transferred to section 60-678.**

**60-2107 Transferred to section 60-6,352.**

**60-2108 Transferred to section 60-6,353.**

## (b) MOTORCYCLE SAFETY EDUCATION

**60-2109** Transferred to section 60-2121.

**60-2110** Transferred to section 60-2125.

**60-2111** Transferred to section 60-2126.

**60-2112** Transferred to section 60-2127.

**60-2113** Transferred to section 60-2128.

**60-2114** Transferred to section 60-2130.

**60-2115** Transferred to section 60-2131.

**60-2116** Transferred to section 60-2132.

**60-2117** Transferred to section 60-2137.

**60-2118** Transferred to section 60-2133.

**60-2118.01** Transferred to section 60-2135.

**60-2119** Transferred to section 60-2139.

**60-2120 Act, how cited.**

Sections 60-2120 to 60-2139 shall be known and may be cited as the Motorcycle Safety Education Act.

**Source:** Laws 1986, LB 1004, § 2; Laws 1989, LB 25, § 2; Laws 2011, LB170, § 4.

**60-2121 Terms, defined.**

For purposes of the Motorcycle Safety Education Act, unless the context otherwise requires:

- (1) Department means the Department of Motor Vehicles;
- (2) Director means the Director of Motor Vehicles;
- (3) Driving course means a driving pattern used to aid students in learning the skills needed to safely operate a motorcycle as part of a motorcycle safety course;
- (4) Motorcycle safety course means a curriculum of study which has been approved by the department designed to teach drivers the skills and knowledge to safely operate a motorcycle;
- (5) Motorcycle safety instructor means any person who has successfully passed a motorcycle safety instructor's course curriculum and is certified by the department to teach a motorcycle safety course; and
- (6) Motorcycle trainer means a person who is qualified and certified by the department to teach another person to become a certified motorcycle safety instructor in this state.

**Source:** Laws 1981, LB 22, § 1; Laws 1984, LB 1089, § 3; R.S.1943, (1984), § 60-2109; Laws 1986, LB 1004, § 3; Laws 2002, LB 93, § 5; Laws 2011, LB170, § 5.

**60-2122 Repealed. Laws 2002, LB 93, § 27.**

**60-2123 Repealed. Laws 2002, LB 93, § 27.**

**60-2124 Repealed. Laws 2002, LB 93, § 27.**

**60-2125 Motorcycle safety courses; requirements.**

(1) The department may adopt and promulgate rules and regulations establishing minimum requirements for both basic and advanced motorcycle safety courses. The courses shall be designed to develop, instill, and improve the knowledge and skills necessary for safe operation of a motorcycle.

(2) The motorcycle safety courses shall be designed to teach either a novice motorcycle rider knowledge and basic riding skills or to refresh the knowledge and riding skills of motorcycle riders necessary for the safe and legal operation of a motorcycle on the highways of this state. Every motorcycle safety course shall be conducted at a site with room for a driving course designed to allow motorcycle riders to practice the knowledge and skills necessary for safe motorcycle operation.

**Source:** Laws 1981, LB 22, § 2; R.S.1943, (1984), § 60-2110; Laws 1986, LB 1004, § 7; Laws 2011, LB170, § 6.

**60-2126 Motorcycle safety course; approval by director; application; contents; certified motorcycle safety instructor required; fee; course audits.**

(1) A school, business, or organization may apply to the department to provide a motorcycle safety course or courses in this state. Prospective providers of such course or courses shall submit an application for approval of such course or courses to the director. The application shall include a list of instructors of the course or courses. Such instructors shall be or shall become motorcycle safety instructors certified by the department prior to teaching any motorcycle safety course in this state. Applications for certification of motorcycle safety instructors may be included along with an application for approval of a motorcycle safety course or courses. The director shall approve such course if it meets the requirements set forth by the department by rule and regulation and will be taught by a certified motorcycle safety instructor or instructors.

(2) The application for certification or renewal of a certification of each motorcycle safety course shall be accompanied by a fee of one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Motorcycle safety course certification shall expire two years from the date of the director's certification.

(3) Motorcycle safety courses shall be subject to audits by the department to assure compliance with the Motorcycle Safety Education Act and rules and regulations of the department.

**Source:** Laws 1981, LB 22, § 3; R.S.1943, (1984), § 60-2111; Laws 1986, LB 1004, § 8; Laws 2011, LB170, § 7.

**60-2127 Motorcycle safety instructors; certificate; requirements; renewal; person certified by another state; how treated.**

(1) The director may adopt and promulgate rules and regulations establishing minimum standards, skills' qualifications, and education requirements for motorcycle safety instructors. The director shall issue or renew a certificate in

the manner and form prescribed by the director to motorcycle safety instructor applicants who meet such requirements. A motorcycle safety instructor certificate shall expire two years after the date of issuance. To renew a certificate, a person shall submit an application demonstrating compliance with rules and regulations of the department.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle safety instructor by another state or recognized accrediting organization may be issued a motorcycle safety instructor's certificate by the department without having to take the course established in section 60-2128.

(3) A person who holds a valid, unexpired permit issued by the department to be a motorcycle safety instructor before January 1, 2012, shall be recognized as a certified motorcycle safety instructor until January 1, 2014, or until the expiration date of such permit, whichever is earlier. At that time the permit holder may apply for and become a certified motorcycle safety instructor to teach a motorcycle safety class in this state as provided in rules and regulations of the department.

**Source:** Laws 1981, LB 22, § 4; R.S.1943, (1984), § 60-2112; Laws 1986, LB 1004, § 9; Laws 2011, LB170, § 8.

**60-2128 Motorcycle safety instructor preparation course; department; duties.**

The department may adopt and promulgate rules and regulations developing a motorcycle safety instructor preparation course which shall be taught by motorcycle trainers. Such course shall insure that the motorcycle safety instructor who successfully passes the course is familiar with the material included in the particular motorcycle safety course which such motorcycle safety instructor will be teaching.

**Source:** Laws 1981, LB 22, § 5; Laws 1984, LB 1089, § 4; R.S.1943, (1984), § 60-2113; Laws 1986, LB 1004, § 10; Laws 2011, LB170, § 9.

**60-2129 Motorcycle trainers; requirements; certificates; person certified by another state; how treated.**

(1) The director may adopt and promulgate rules and regulations establishing minimum education requirements for motorcycle trainers. The director shall issue certificates in the manner and form prescribed by the director to no more than two motorcycle trainers who meet the minimum education, skill, and experience requirements. The department may reimburse documented expenses incurred by a person in connection with taking and successfully passing an educational course to become a motorcycle trainer, as provided in sections 81-1174 to 81-1177, when there are less than two motorcycle trainers working in this state. In return for the reimbursement of such documented expenses, motorcycle trainers shall teach the motorcycle safety instructor preparation course as assigned by the director.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle trainer by another state or recognized accrediting organization may be issued a motorcycle trainer's certificate by the department without having to receive the training required by this section.

(3) A person who holds a valid, unexpired permit issued by the department to be a chief instructor for motorcycle safety before January 1, 2012, shall be recognized as a motorcycle trainer until January 1, 2014, or until the expiration date of such permit, whichever is earlier. At that time the permit holder may apply for and be recertified as a motorcycle trainer to teach a motorcycle safety instructor preparation class in this state as provided in rules and regulations of the department.

**Source:** Laws 1986, LB 1004, § 11; Laws 2011, LB170, § 10.

**60-2130 Motorcycle safety instructor or motorcycle trainer; certificate; term; renewal.**

All certificates issued under sections 60-2127 and 60-2129 shall be valid for two years and may be renewed upon application to the director as provided in rules and regulations of the department.

**Source:** Laws 1981, LB 22, § 6; R.S.1943, (1984), § 60-2114; Laws 1986, LB 1004, § 12; Laws 1997, LB 752, § 148; Laws 2011, LB170, § 11.

**60-2131 Certification of motorcycle safety course, motorcycle safety instructor's certificate, or motorcycle trainer's certificate; denial, suspension, or revocation; procedure.**

(1) The director may cancel, suspend, revoke, or refuse to issue or renew certification of a motorcycle safety course, a motorcycle safety instructor's certificate, or a motorcycle trainer's certificate in any case when the director finds the certificate holder or applicant has not complied with or has violated the Motorcycle Safety Education Act or any rule or regulation adopted and promulgated by the director.

(2) No person or provider whose certificate has been canceled, suspended, revoked, or refused shall be certified until the person or provider meets the requirements of rules and regulations of the department and shows that the event or occurrence that caused the director to take action has been corrected and will not affect future performance. Persons or providers who are suspended may be summarily reinstated upon the director's acceptance of a demonstration of compliance and satisfactory correction of any noncompliance. All other persons or providers shall reapply for certification. A person or provider may contest action taken by the director to cancel, suspend, revoke, or refuse to issue or renew a certificate by filing a written petition with the department within thirty days after the date of the director's action.

**Source:** Laws 1981, LB 22, § 7; R.S.1943, (1984), § 60-2115; Laws 1986, LB 1004, § 13; Laws 1989, LB 285, § 136; Laws 1999, LB 704, § 48; Laws 2011, LB170, § 12.

**60-2132 Repealed. Laws 2011, LB 170, § 17.**

**60-2132.01 Motorcycle Safety Education Fund; transfers.**

Within sixty days after January 1, 2012, twenty-five percent of the money remaining in the Motorcycle Safety Education Fund shall be transferred to the Department of Motor Vehicles Cash Fund and seventy-five percent of the money remaining in the Motorcycle Safety Education Fund shall be transferred

to the Highway Trust Fund. The Motorcycle Safety Education Fund shall be eliminated on such date after the transfers are made.

**Source:** Laws 2011, LB170, § 13.

**60-2133 Repealed. Laws 2011, LB 170, § 17.**

**60-2134 Repealed. Laws 2011, LB 170, § 17.**

**60-2135 Repealed. Laws 2011, LB 170, § 17.**

**60-2136 Repealed. Laws 2011, LB 170, § 17.**

**60-2137 Repealed. Laws 2011, LB 170, § 17.**

**60-2138 Repealed. Laws 2011, LB 170, § 17.**

**60-2139 Rules and regulations.**

The director may adopt and promulgate such rules and regulations for the administration and enforcement of the Motorcycle Safety Education Act as are necessary. In adopting such rules and regulations, the director shall comply with the Administrative Procedure Act.

**Source:** Laws 1981, LB 22, § 14; R.S.1943, (1984), § 60-2119; Laws 1986, LB 1004, § 21; Laws 2011, LB170, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

**60-2140 Repealed. Laws 1989, LB 25, § 3.**

**60-2141 Repealed. Laws 1989, LB 25, § 3.**

ARTICLE 22

CONTROL OF SMOKE EMISSIONS AND NOISE

Section

- 60-2201. Transferred to section 60-6,363.
- 60-2202. Transferred to section 60-6,364.
- 60-2203. Transferred to section 60-6,365.
- 60-2204. Transferred to section 60-6,366.
- 60-2205. Transferred to section 60-6,367.
- 60-2206. Transferred to section 60-6,368.
- 60-2207. Transferred to section 60-6,369.
- 60-2208. Transferred to section 60-6,370.
- 60-2209. Transferred to section 60-6,371.
- 60-2210. Transferred to section 60-6,372.
- 60-2211. Transferred to section 60-6,373.
- 60-2212. Transferred to section 60-6,374.

**60-2201 Transferred to section 60-6,363.**

**60-2202 Transferred to section 60-6,364.**

**60-2203 Transferred to section 60-6,365.**

**60-2204 Transferred to section 60-6,366.**

**60-2205 Transferred to section 60-6,367.**

- 60-2206 Transferred to section 60-6,368.**
- 60-2207 Transferred to section 60-6,369.**
- 60-2208 Transferred to section 60-6,370.**
- 60-2209 Transferred to section 60-6,371.**
- 60-2210 Transferred to section 60-6,372.**
- 60-2211 Transferred to section 60-6,373.**
- 60-2212 Transferred to section 60-6,374.**

**ARTICLE 23  
ODOMETERS**

- Section
- 60-2301. Transferred to section 60-132.
  - 60-2302. Transferred to section 60-133.
  - 60-2303. Transferred to section 60-134.
  - 60-2304. Transferred to section 60-135.
  - 60-2305. Transferred to section 60-136.
  - 60-2306. Transferred to section 60-137.
  - 60-2307. Transferred to section 60-138.

- 60-2301 Transferred to section 60-132.**
- 60-2302 Transferred to section 60-133.**
- 60-2303 Transferred to section 60-134.**
- 60-2304 Transferred to section 60-135.**
- 60-2305 Transferred to section 60-136.**
- 60-2306 Transferred to section 60-137.**
- 60-2307 Transferred to section 60-138.**

**ARTICLE 24  
PARKING LOTS**

- Section
- 60-2401. Restricted parking lots; cities of the metropolitan or primary class; vehicles towed away; when.
  - 60-2401.01. Restricted parking lots; unauthorized parking; towing; violation; penalty.
  - 60-2402. Restricted parking lot; signs designating.
  - 60-2403. Vehicle towed away; notification to local law enforcement agency; renotification.
  - 60-2404. Vehicle towed away; lien and disposition; when.
  - 60-2405. Vehicle towed away; properly parked; liability.
  - 60-2406. Vehicle towed away; liability for reasonably foreseeable damages.
  - 60-2407. Vehicle; full possession of towing vehicle; when; effect.
  - 60-2408. Owner or driver; given written statement by tower; contents.
  - 60-2409. Person towing vehicle; ascertain owner or tenant of lot.
  - 60-2410. Towing and storage fees; liability; lien; notice.
  - 60-2411. Owner or tenant of lot; solicit or accept compensation from tower; prohibited.

**60-2401 Restricted parking lots; cities of the metropolitan or primary class; vehicles towed away; when.**

In cities of the metropolitan or primary class which have not adopted an ordinance conforming to section 60-2401.01, vehicles parked in a restricted parking lot without the consent of the owner or tenant shall be subject to being towed away, if the lot is properly posted.

**Source:** Laws 1979, LB 348, § 1; Laws 1981, LB 47, § 1; Laws 2010, LB1065, § 1.

Motor vehicles parked in a restricted parking lot without the consent of the owner or tenant shall be subject to being towed away if the lot is properly posted. *Packett v. Lincolnland Towing*, 227 Neb. 595, 419 N.W.2d 149 (1988).

**60-2401.01 Restricted parking lots; unauthorized parking; towing; violation; penalty.**

Except in cities of the metropolitan or primary class, any person parking a vehicle in a properly posted, restricted parking lot without the consent of the owner or tenant authorized to give permission shall be guilty of an infraction and the vehicle shall be subject to being towed away at the request of such lot owner or tenant. Any person found guilty under this section shall be subject to the penalties provided in section 29-436 for infractions. If the identity of the operator of a vehicle in violation of this section cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such infraction. When any law enforcement officer observes or is advised that a vehicle may be in violation of this section, he or she shall make a determination as to whether a violation has in fact occurred and, if so, shall personally serve or attach to such vehicle a citation pursuant to section 29-424, directed to the owner or operator of such vehicle, which shall set forth the nature of the violation. Any person who refuses to sign the citation or otherwise comply with the command of the citation shall be punished as provided by section 29-426. As used in this section, law enforcement officer shall include any authorized representative of a law enforcement agency.

**Source:** Laws 1981, LB 47, § 2; Laws 2010, LB1065, § 2.

**60-2402 Restricted parking lot; signs designating.**

Signs designating a restricted parking lot shall be readily visible and shall state the purpose or purposes for parking on the restricted parking lot, state the hours for restricted parking, and state who to contact for information regarding a towed vehicle.

**Source:** Laws 1979, LB 348, § 2; Laws 1981, LB 47, § 3.

**60-2403 Vehicle towed away; notification to local law enforcement agency; renotification.**

Anyone towing a vehicle away pursuant to sections 60-2401 to 60-2411 shall notify the local law enforcement agency within twenty-four hours of the license number of the vehicle. Anyone towing a vehicle away pursuant to sections 60-2401 to 60-2411 and holding the vehicle for more than twenty-nine days shall, on the thirtieth day, renotify the local law enforcement agency of the vehicle's license number for the purpose of ascertaining whether the vehicle has been reported stolen or missing. Such renotification shall be repeated each



thirty days while the vehicle is held by the tower or until such time as the tower has placed a lien on the vehicle as provided by section 60-2404.

**Source:** Laws 1979, LB 348, § 3; Laws 2010, LB1065, § 3.

**60-2404 Vehicle towed away; lien and disposition; when.**

A vehicle towed away under sections 60-2401 to 60-2411, which is not claimed by the owner within ninety days after towing, is subject to lien and disposition under Chapter 52, article 6, by the person who towed the vehicle.

**Source:** Laws 1979, LB 348, § 4; Laws 2005, LB 82, § 6; Laws 2010, LB1065, § 4.

**60-2405 Vehicle towed away; properly parked; liability.**

Any owner or tenant causing the towing away of a vehicle that is not improperly parked on a restricted lot shall cause the return of the vehicle to its owner or driver at no charge to such owner or driver. The person causing the vehicle to be towed shall be liable for any reasonably foreseeable damage incurred by the owner or driver of the vehicle due to loss of transportation.

**Source:** Laws 1979, LB 348, § 5; Laws 2010, LB1065, § 5.

**60-2406 Vehicle towed away; liability for reasonably foreseeable damages.**

Anyone towing away a vehicle pursuant to sections 60-2401 to 60-2411 shall be liable for any reasonably foreseeable damages to the vehicle that occur during the hookup, towing, or disengagement of the vehicle to or from the towing vehicle and anyone storing such a towed vehicle shall be liable for any reasonably foreseeable damage to the vehicle and the personal contents therein during the storage period.

**Source:** Laws 1979, LB 348, § 6; Laws 2010, LB1065, § 6.

**60-2407 Vehicle; full possession of towing vehicle; when; effect.**

Anyone attempting to tow away a vehicle pursuant to sections 60-2401 to 60-2411 shall not be in full possession of the vehicle to be towed until the vehicle has been fully and completely attached to his or her towing vehicle. The tower shall, upon request of the owner or driver of the vehicle to be towed, disengage the towing apparatus at any time prior to taking full possession, as defined in this section, of the vehicle.

**Source:** Laws 1979, LB 348, § 7; Laws 2010, LB1065, § 7.

**60-2408 Owner or driver; given written statement by tower; contents.**

The owner or driver of any vehicle towed away pursuant to sections 60-2401 to 60-2411 shall, upon regaining possession of the vehicle from the tower, be given a written statement by the tower fully detailing: (1) The name and address of the person or persons who caused the vehicle to be towed; (2) under what statutory authority the vehicle was towed; and (3) his or her rights under sections 60-2401 to 60-2411.

**Source:** Laws 1979, LB 348, § 8; Laws 2010, LB1065, § 8.

**60-2409 Person towing vehicle; ascertain owner or tenant of lot.**

Anyone towing a vehicle pursuant to sections 60-2401 to 60-2411 shall take reasonable steps to ascertain that the person causing the vehicle to be towed is the owner or tenant of the lot from which the vehicle is to be towed.

**Source:** Laws 1979, LB 348, § 9; Laws 2010, LB1065, § 9.

**60-2410 Towing and storage fees; liability; lien; notice.**

(1) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle under Chapter 52, article 6, and, except as provided in subsection (3) of this section, shall be prior to all other claims. Any person towing or storing a vehicle may retain possession of such vehicle until such charges are paid or, after ninety days, may dispose of such vehicle to satisfy the lien. Upon payment of such charges, the person towing or storing the vehicle shall return possession of the vehicle to the (a) owner, (b) lienholder, or (c) any other person lawfully entitled to the possession of such vehicle making payment of such charges. The lien provided for in this section shall not apply to the contents of any vehicle.

(2) The person towing the vehicle shall, within fifteen business days after towing, notify any lienholder appearing on the certificate of title of the vehicle and the owner of the vehicle of the towing of the vehicle. The notice shall be sent by certified mail, return receipt requested, to the last-known address of the lienholder and owner of the vehicle. The notice shall contain:

(a) The make, model, color, year, and vehicle identification number of the vehicle;

(b) The name, address, and telephone number of the person who towed the vehicle;

(c) The date of towing;

(d) The daily storage fee and the storage fee accrued as of the date of the notification; and

(e) A statement that the vehicle is subject to lien and disposition by sale or other manner ninety days after the date of towing under Chapter 52, article 6.

(3) Failure to provide notice as prescribed in subsection (2) of this section shall result in the lien of the person who towed the vehicle being subordinate to the lien of the lienholder appearing on the certificate of title and render void any disposition of the vehicle by the person who towed the vehicle.

**Source:** Laws 1979, LB 348, § 10; Laws 1988, LB 833, § 4; Laws 2005, LB 82, § 7; Laws 2010, LB1065, § 10.

This section does not provide for a lien for protection of the tow in collecting fees. The reference in this section to section 60-2405 is an obvious error because section 60-2405 does not concern a lien. Section 60-2404 was apparently intended. Packett v. Lincolnland Towing, 227 Neb. 595, 419 N.W.2d 149 (1988).

**60-2411 Owner or tenant of lot; solicit or accept compensation from tower; prohibited.**

Any owner or tenant causing the towing away of a vehicle shall not solicit or accept therefor a commission, gift, gratuity, or any form of compensation or wealth from the person or business towing away the vehicle.

**Source:** Laws 1979, LB 348, § 11; Laws 2010, LB1065, § 11.

**ARTICLE 25**  
**RIDE SHARING**

## Section

- 60-2501. Ride-sharing arrangement, defined.
- 60-2502. Laws not applicable.
- 60-2503. Workers' compensation law; not applicable; when.
- 60-2504. Employer not liable for injuries; when.
- 60-2505. Tax or license; prohibited.
- 60-2506. Minimum wage scale laws; not applicable.
- 60-2507. Motor vehicle; exemption from certain laws; when.
- 60-2508. Use of public vehicles authorized.

**60-2501 Ride-sharing arrangement, defined.**

For purposes of sections 60-2501 to 60-2508, ride-sharing arrangement shall mean the carrying of more than one, but not more than fifteen passengers by motor vehicle on any public road or highway, either regularly or occasionally, with or without compensation, but not for profit, and the carriage of such passengers is incidental to another purpose of the motor vehicle operator. The term shall include ride-sharing arrangements commonly known as carpools, vanpools, and buspools.

**Source:** Laws 1981, LB 50, § 1.

**60-2502 Laws not applicable.**

The following laws and regulations of this state shall not apply to any ride-sharing arrangement using a motor vehicle with a seating capacity for not more than fifteen persons, including the driver:

- (1) Chapter 75, pertaining to the regulation of motor carriers of any kind or description by the Public Service Commission;
- (2) Laws and regulations containing insurance requirements that are specifically applicable to motor carriers or commercial motor vehicles;
- (3) Laws and regulations with equipment requirements and special accident reporting requirements that are specifically applicable to motor carriers or commercial motor vehicles; and
- (4) Laws imposing a tax on fuel purchased in another state by a motor carrier.

**Source:** Laws 1981, LB 50, § 2.

**60-2503 Workers' compensation law; not applicable; when.**

The Nebraska Workers' Compensation Act shall not apply to a person injured while participating in a ride-sharing arrangement between his or her place of residence and place of employment or terminals near such places, except that if the employer owns, leases, or contracts for the motor vehicle used in such arrangement, pays for the time spent in travel, or pays the expense of travel, such act shall apply.

**Source:** Laws 1981, LB 50, § 3; Laws 1986, LB 811, § 141.

## Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

**60-2504 Employer not liable for injuries; when.**

(1) An employer shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle not owned, leased, or contracted for by the employer, in a ride-sharing arrangement.

(2) An employer shall not be liable for injuries to passengers and other persons because he or she provides information, incentives, or otherwise encourages his or her employees to participate in ride-sharing arrangements, except as provided in section 60-2503.

**Source:** Laws 1981, LB 50, § 4.

**60-2505 Tax or license; prohibited.**

No county, city, village, or other municipal subdivision may impose a tax on, or require a license for, a ride-sharing arrangement using a motor vehicle with a seating capacity for not more than fifteen persons, including the driver.

**Source:** Laws 1981, LB 50, § 5.

**60-2506 Minimum wage scale laws; not applicable.**

The mere fact that an employee participates in any kind of ride-sharing arrangement shall not result in the application of Chapter 48, article 12, relating to payment of a minimum wage, overtime pay, or otherwise regulating the hours a person may work.

**Source:** Laws 1981, LB 50, § 6.

**60-2507 Motor vehicle; exemption from certain laws; when.**

A motor vehicle used in a ride-sharing arrangement that has a seating capacity for not more than fifteen persons, including the driver, shall not be a bus or commercial vehicle under the Motor Vehicle Registration Act or the Nebraska Rules of the Road.

**Source:** Laws 1981, LB 50, § 7; Laws 1993, LB 370, § 474; Laws 2005, LB 274, § 265.

## Cross References

Motor Vehicle Registration Act, see section 60-301.

Nebraska Rules of the Road, see section 60-601.

**60-2508 Use of public vehicles authorized.**

Motor vehicles owned or operated by any state or local agency may be used in ride-sharing arrangements for public employees. Participants in any such ride-sharing arrangement shall pay the actual total costs of using the vehicle in that arrangement.

**Source:** Laws 1981, LB 50, § 8.

**ARTICLE 26****WRECKER OR SALVAGE DEALERS**

## Section

60-2601. Terms, defined.

60-2602. Acquisition of vehicle or parts; duties; record; contents.

60-2603. Possession of salvage vehicle on August 26, 1983; effect.

60-2604. Possession of major component part on August 26, 1983; duties.

60-2605. Record requirements.

60-2606. Records; maintenance and location.

## Section

60-2607. Records; inspection.

60-2608. Peace officer; seize vehicle or major component part; when; disposition.

**60-2601 Terms, defined.**

As used in sections 60-2602 to 60-2607, unless the context otherwise requires:

- (1) Major component part shall mean an engine, with or without accessories, a transmission, cowl, door, frame, body, rear clip, or nose;
- (2) Nose shall mean that portion of the body of a vehicle from the front to the firewall when acquired or transferred as a complete unit;
- (3) Frame shall mean that portion of a vehicle upon which other components are affixed, such as the engine, body, or transmission;
- (4) Body shall mean that portion of a vehicle which determines its shape and appearance and is attached to the frame; and
- (5) Rear clip shall mean two or more of the following, all dismantled from the same vehicle: A quarter panel or fender, floor panel assembly, or trunk lid or gate.

**Source:** Laws 1983, LB 234, § 19.

**60-2602 Acquisition of vehicle or parts; duties; record; contents.**

Whenever any wrecker or salvage dealer who is required to be licensed pursuant to the Motor Vehicle Industry Regulation Act acquires, after August 26, 1983, any material which is or may have been a vehicle or major component part:

- (1) The wrecker or salvage dealer shall determine by means of a driver's license, state identification card, certificate of employer's federal identification number, or license issued by the board, the identity of the person or firm from whom such material is acquired; and
- (2) Each such wrecker or salvage dealer shall maintain a record of the following information:
  - (a) The name and address of the person or firm from whom such material was acquired;
  - (b) The means by which such person or firm was identified, including the number and issuing state of any driver's license or state identification card, the federal employer's identification number, or the licensee's number issued by the board;
  - (c) A general description of the material acquired, including, but not limited to, if available and identifiable, the year, make, model, manufacturer's vehicle identification number, and any other identifying marks or numbers, of any vehicle or major component part; and
  - (d) The date of acquisition, the purchase price, including the value and description of any material traded, and the type of payment, including the number of any check or draft issued or received in exchange for such material.

**Source:** Laws 1983, LB 234, § 22; Laws 2010, LB816, § 86.

## Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-2603 Possession of salvage vehicle on August 26, 1983; effect.**

Any wrecker or salvage dealer licensed by the board pursuant to the Motor Vehicle Industry Regulation Act having possession on August 26, 1983, of both a salvage vehicle and a certificate of title for such vehicle, either issued to or assigned to such a person, shall not be required to obtain a salvage branded certificate of title for such vehicle except upon transfer of the vehicle to a person not required to be licensed as a wrecker or salvage dealer by the board.

**Source:** Laws 1983, LB 234, § 23; Laws 2002, LB 830, § 24; Laws 2010, LB816, § 87.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-2604 Possession of major component part on August 26, 1983; duties.**

Any wrecker or salvage dealer required to be licensed by the board pursuant to the Motor Vehicle Industry Regulation Act having possession on August 26, 1983, of a major component part shall include in his or her regular business records the information required to be recorded by subdivision (2) of section 60-2602, to the extent such information is available.

**Source:** Laws 1983, LB 234, § 24; Laws 2010, LB816, § 88.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-2605 Record requirements.**

The records required by sections 60-2602 to 60-2604 shall be maintained for any vehicle of any model year, but records of major component parts shall be maintained only with respect to major component parts of vehicles five model years or less in age on the date of acquisition. The board may by rule and regulation, exempt vehicles or major component parts of vehicles from all or a portion of the record-keeping requirements, based upon the age of the vehicle or part if the board deems that such requirements would serve no substantial value.

**Source:** Laws 1983, LB 234, § 25.

**60-2606 Records; maintenance and location.**

Every record required to be maintained pursuant to sections 60-2602 to 60-2604 shall be maintained by such a wrecker or salvage dealer in the ordinary course of business and shall be maintained for five years at the principal place of business of such wrecker or salvage dealer, in such a manner that, upon request during regular business hours by any designated peace officer or investigator employed by the board, such wrecker or salvage dealer shall be able, within a reasonable time, not exceeding twelve hours, to furnish the information requested.

**Source:** Laws 1983, LB 234, § 26.

**60-2607 Records; inspection.**

Every record required to be maintained pursuant to sections 60-2602 to 60-2604 shall be open to inspection by any designated peace officer or investigator employed by the board for inspection during regular business hours. Such

inspection may include examination of the subject premises and contents for the purpose of determining the accuracy of the required records.

**Source:** Laws 1983, LB 234, § 27.

**60-2608 Peace officer; seize vehicle or major component part; when; disposition.**

(1) Any peace officer shall seize and take possession of any vehicle or any major component part, as defined in section 60-2601, of a vehicle which the officer has probable cause to believe is stolen, or on which the identification number has been obscured, covered, removed, altered, or destroyed.

(2) Property seized pursuant to this section shall not be subject to a replevin action and:

(a) Shall be kept by the law enforcement agency which employs the officer who seized such property, or by its designee, for so long as it is needed as evidence in any trial; and

(b) When no longer required as evidence, such property shall be disposed of pursuant to sections 29-818 to 29-821.

(3) Property seized pursuant to this section solely on account of an obscured identification number may be restored to the owner or his or her designee without court order unless such property is required as evidence in a criminal action pending or contemplated in this or another jurisdiction.

**Source:** Laws 1983, LB 234, § 28.

**ARTICLE 27**

**MANUFACTURER'S WARRANTY DUTIES**

Section

- 60-2701. Terms, defined.
- 60-2702. Motor vehicle not conforming to express warranties; duty to repair.
- 60-2703. Manufacturer's duty to replace vehicle or refund price; when; affirmative defense.
- 60-2704. Attempts to conform motor vehicle to warranties; presumption; term of warranty; how computed.
- 60-2705. Dispute settlement procedure; effect; director; duties.
- 60-2706. Statute of limitations.
- 60-2707. Attorney's fees; when allowed.
- 60-2708. Sections, how construed.
- 60-2709. Applicability of sections.

**60-2701 Terms, defined.**

As used in sections 60-2701 to 60-2709, unless the context otherwise requires:

(1) Consumer shall mean the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, household, or business purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) Motor vehicle shall mean a new motor vehicle as defined in section 60-1401.30 which is sold in this state, excluding recreational vehicles as defined in section 60-347; and

(3) Manufacturer's express warranty shall mean the written warranty, so labeled, of the manufacturer of a new motor vehicle.

**Source:** Laws 1983, LB 155, § 1; Laws 1989, LB 280, § 10; Laws 2005, LB 274, § 266; Laws 2010, LB816, § 89.

A precise or specific defect does not need to be proved in order to find a product defective under either article 2 of the Uniform Commercial Code or sections 60-2701 to 60-2709. *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001).

An action under sections 60-2701 to 60-2709 is an action at law. *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001).

Under section 60-2708, a theory of recovery under sections 60-2701 to 60-2709 may be brought together with other theories of recovery. Theories of recovery for both breach of warranty and for recovery under sections 60-2701 to 60-2709 may be submitted to the jury, but once a plaintiff receives verdicts under both theories of recovery, he or she must elect between them. *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001).

**60-2702 Motor vehicle not conforming to express warranties; duty to repair.**

If a motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

**Source:** Laws 1983, LB 155, § 2.

**60-2703 Manufacturer's duty to replace vehicle or refund price; when; affirmative defense.**

If the manufacturer, its agents, or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all sales taxes, license fees, and registration fees and any similar governmental charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer and any previous owner prior to his or her first report of the nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under sections 60-2701 to 60-2709 (1) that an alleged nonconformity does not substantially impair such use and market value or (2) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.

**Source:** Laws 1983, LB 155, § 3.

**60-2704 Attempts to conform motor vehicle to warranties; presumption; term of warranty; how computed.**

It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer, its agents, or authorized dealers within the express warranty



term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of forty or more days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period, and such forty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, or strike, or fire, flood, or other natural disaster. In no event shall the presumption provided in this section apply against a manufacturer unless the manufacturer has received prior written direct notification by certified mail from or on behalf of the consumer and an opportunity to cure the defect alleged.

**Source:** Laws 1983, LB 155, § 4.

**60-2705 Dispute settlement procedure; effect; director; duties.**

The Director of Motor Vehicles shall adopt standards for an informal dispute settlement procedure which substantially comply with the provisions of 16 C.F.R. part 703, as such part existed on January 1, 2021.

If a manufacturer has established or participates in a dispute settlement procedure certified by the Director of Motor Vehicles within the guidelines of such standards, the provisions of section 60-2703 concerning refunds or replacement shall not apply to any consumer who has not first resorted to such a procedure.

**Source:** Laws 1983, LB 155, § 5; Laws 2019, LB79, § 20; Laws 2020, LB944, § 73; Laws 2021, LB149, § 19.  
Effective date August 28, 2021.

**60-2706 Statute of limitations.**

Any action brought under sections 60-2701 to 60-2709 shall be commenced within (1) one year following the expiration of the express warranty term or (2) two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date.

**Source:** Laws 1983, LB 155, § 6.

**60-2707 Attorney's fees; when allowed.**

In any action brought under sections 60-2701 to 60-2709 the court shall award reasonable attorney's fees to the prevailing party if the prevailing party is the consumer.

**Source:** Laws 1983, LB 155, § 7.

**60-2708 Sections, how construed.**

Nothing in sections 60-2701 to 60-2709 shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

**Source:** Laws 1983, LB 155, § 8.

Under this section, a theory of recovery under sections 60-2701 to 60-2709 may be brought together with other theories of recovery. *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001).

**60-2709 Applicability of sections.**

Sections 60-2701 to 60-2709 shall apply to motor vehicles beginning with the manufacturer's 1984 model year.

**Source:** Laws 1983, LB 155, § 9.

ARTICLE 28

ALL-TERRAIN VEHICLES

Section

- 60-2801. Transferred to section 60-6,355.
- 60-2802. Transferred to section 60-6,356.
- 60-2803. Transferred to section 60-6,357.
- 60-2804. Transferred to section 60-6,358.
- 60-2805. Transferred to section 60-6,359.
- 60-2806. Transferred to section 60-6,360.
- 60-2807. Transferred to section 60-6,361.
- 60-2808. Transferred to section 60-6,362.

**60-2801 Transferred to section 60-6,355.**

**60-2802 Transferred to section 60-6,356.**

**60-2803 Transferred to section 60-6,357.**

**60-2804 Transferred to section 60-6,358.**

**60-2805 Transferred to section 60-6,359.**

**60-2806 Transferred to section 60-6,360.**

**60-2807 Transferred to section 60-6,361.**

**60-2808 Transferred to section 60-6,362.**

ARTICLE 29

UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT

Section

- 60-2901. Act, how cited.
- 60-2902. Purpose of act.
- 60-2903. Legislative findings and intent.
- 60-2904. Terms, defined.
- 60-2905. Disclosure of personal information prohibited.
- 60-2906. Personal information; disclosure pursuant to federal law.
- 60-2907. Motor vehicle record; disclosure; authorized purposes.
- 60-2908. Fees.
- 60-2909. Conditions for disclosure.
- 60-2909.01. Disclosure; purposes authorized.
- 60-2910. Resale or redisclosure of information.
- 60-2911. Rules and regulations.
- 60-2912. False statement; disclosure of sensitive personal information; penalty.
- 60-2913. Repealed. Laws 2000, LB 1317, § 18.

**60-2901 Act, how cited.**

Sections 60-2901 to 60-2912 shall be known and may be cited as the Uniform Motor Vehicle Records Disclosure Act.

**Source:** Laws 1997, LB 635, § 1; Laws 2000, LB 1317, § 10.

**60-2902 Purpose of act.**

The purpose of the Uniform Motor Vehicle Records Disclosure Act is to implement the federal Driver's Privacy Protection Act of 1994, Title XXX of

Public Law 103-322, in order to protect the interest of individuals in their personal privacy by prohibiting the disclosure and use of personal information contained in their motor vehicle records except as authorized by such individuals or by law.

**Source:** Laws 1997, LB 635, § 2.

**60-2903 Legislative findings and intent.**

(1) The Legislature hereby finds that the federal Driver's Privacy Protection Act of 1994, with an effective date of September 13, 1997, provides for mandatory release in some instances and restrictions on release and use in other instances of certain personal information from state motor vehicle records and also provides numerous exceptions from those restrictions. Some of the exceptions are dependent on state legislation, and the purpose of the Uniform Motor Vehicle Records Disclosure Act is to enact choices permitted under the federal legislation in the interest of ensuring that motor vehicle record information which is a matter of public record shall remain a matter of public record in this state to the maximum extent permitted under the federal law.

(2) The Legislature intends that to the extent permitted by the federal law, Nebraska law pertaining to motor vehicle records should continue to recognize such records as public records to the extent it has done so prior to the effective date of the federal legislation and the terms of the Uniform Motor Vehicle Records Disclosure Act should be construed liberally to effect that purpose.

**Source:** Laws 1997, LB 635, § 3.

**60-2904 Terms, defined.**

For purposes of the Uniform Motor Vehicle Records Disclosure Act:

(1) Department means the Department of Motor Vehicles or the duly authorized agents or contractors of the department responsible to compile and maintain motor vehicle records;

(2) Disclose means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person, organization, or entity by any means of communication;

(3) Individual record means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request;

(4) Motor vehicle record means any record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle, trailer, motorboat, all-terrain vehicle, utility-type vehicle, snowmobile, or minibike registration or certificate of title, or state identification card issued by the department or any other state or local agency authorized to issue any of such forms of credentials;

(5) Person means an individual, organization, or entity;

(6) Personal information means information that identifies a person, including an individual's driver identification number, name, address excluding zip code, and telephone number, but does not include information on collisions, driving, operating, or equipment-related violations, or operator's license or registration status; and

(7) Sensitive personal information means an individual's operator's license digital image, social security number, and medical or disability information.

**Source:** Laws 1997, LB 635, § 4; Laws 2000, LB 1317, § 11; Laws 2001, LB 574, § 32; Laws 2014, LB777, § 12; Laws 2017, LB263, § 78.

**60-2905 Disclosure of personal information prohibited.**

(1) Notwithstanding any other provision of state law to the contrary, except as provided in sections 60-2906 and 60-2907, the department and any officer, employee, agent, or contractor of the department shall not disclose personal information about any person obtained by the department in connection with a motor vehicle record.

(2) Notwithstanding any other provision of state law to the contrary, except as provided in sections 60-483, 60-484, 60-4,144, and 60-2909.01, the department and any officer, employee, agent, or contractor of the department shall not disclose sensitive personal information about any person obtained by the department in connection with a motor vehicle record without the express written consent of the person to whom such information pertains.

**Source:** Laws 1997, LB 635, § 5; Laws 2000, LB 1317, § 12; Laws 2014, LB983, § 57.

**60-2906 Personal information; disclosure pursuant to federal law.**

Personal information referred to in section 60-2905 shall be disclosed by the department or any officer, employee, agent, or contractor of the department to carry out the purposes of Titles I and IV of the Anti-Car Theft Act of 1992, 15 U.S.C. 2021 et seq., the Automobile Information Disclosure Act, 15 U.S.C. 1231 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., and 49 U.S.C. chapters 301, 305, and 321 to 331, as amended, and all federal regulations enacted or adopted to implement such federal laws.

**Source:** Laws 1997, LB 635, § 6.

**60-2907 Motor vehicle record; disclosure; authorized purposes.**

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the personal information in the record, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors but only:

(a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(b) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(7) For use in providing notice to the owners of abandoned, towed, or impounded vehicles;

(8) For use only for a purpose permitted under this section either by a private detective, plain clothes investigator, or private investigative agency licensed under sections 71-3201 to 71-3213;

(9) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license or CLP-commercial learner's permit that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., or pursuant to sections 60-4,132 and 60-4,141;

(10) For use in connection with the operation of private toll transportation facilities;

(11) For bulk distribution for surveys of, marketing to, or solicitations of persons who have expressly consented to such disclosure if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department on a form prescribed by the department;

(12) For any use if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department;

(13) For use, including redisclosure through news publication, of a member of a medium of communication as defined in section 20-145 who requests such information in connection with preparing, researching, gathering, or confirming news information involving motor vehicle or driver safety or motor vehicle theft;

(14) For use by the federally designated organ procurement organization for Nebraska to establish and maintain the Donor Registry of Nebraska as provided in section 71-4822;

(15) For use to fulfill the requirements of the electronic dealer services system pursuant to section 60-1507; and

(16) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

**Source:** Laws 1997, LB 635, § 7; Laws 2000, LB 1317, § 13; Laws 2004, LB 559, § 6; Laws 2010, LB1036, § 34; Laws 2014, LB983, § 58; Laws 2017, LB263, § 79.

#### **60-2908 Fees.**

Disclosure of personal information required or permitted under section 60-2906 or 60-2907 shall be subject to payment by the requester to the department of all fees for the information prescribed by statute.

**Source:** Laws 1997, LB 635, § 8.

#### **60-2909 Conditions for disclosure.**

In addition to provision for payment of applicable fees, the department may, prior to the disclosure of personal information as permitted under section 60-2906 or 60-2907, require the meeting of conditions by the requester for the purposes of obtaining reasonable assurance concerning the identity of the requester and, to the extent required, that the information will only be used as authorized or that the consent of the person who is the subject of the information has been obtained. Such conditions shall include, but need not be limited to, the making and filing of a form containing such information and verification as the department may prescribe.

**Source:** Laws 1997, LB 635, § 9.

#### **60-2909.01 Disclosure; purposes authorized.**

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the sensitive personal information in the record, other than the social security number, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

(2) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(3) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(4) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license or CLP-commercial learner's permit that is required under the Commercial Motor

Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., as such act existed on January 1, 2021, or pursuant to sections 60-4,132 and 60-4,141; and

(5) For use by employers of a holder of a commercial driver’s license or CLP-commercial learner’s permit and by the Commercial Driver License Information System as provided in section 60-4,144.02 and 49 C.F.R. 383.73, as such regulation existed on January 1, 2021.

**Source:** Laws 2000, LB 1317, § 14; Laws 2011, LB178, § 20; Laws 2014, LB983, § 59; Laws 2019, LB79, § 21; Laws 2020, LB944, § 74; Laws 2021, LB149, § 20.  
Effective date August 28, 2021.

**60-2910 Resale or redisclosure of information.**

(1) An authorized recipient of personal information disclosed under section 60-2906 or 60-2907, except a recipient under subdivision (11) of section 60-2907, may resell or redisclose the information only for the uses permitted under section 60-2907, but not including the use for bulk distribution for surveys, marketing, or solicitations as set forth in subdivision (11) of such section.

(2) An authorized recipient of personal information for bulk distribution for surveys, marketing, or solicitations under subdivision (11) of section 60-2907 may resell or redisclose personal information only in accordance with the terms of such subdivision concerning the right of individuals who have so consented to such disclosure.

(3) An authorized recipient who resells or rediscloses personal information shall (a) make and keep for a period of not less than five years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained and (b) make such records available for inspection and copying by a representative of the department upon request.

(4) The department may implement any safeguard which the department considers reasonable or necessary, including a bond requirement, in a memorandum of understanding executed under this section to ensure that the information provided or sold is used only for a permissible purpose and that the rights of individuals and the interest of the state are protected.

**Source:** Laws 1997, LB 635, § 10; Laws 2000, LB 1317, § 15.

**60-2911 Rules and regulations.**

The department is authorized to adopt and promulgate rules and regulations to carry out the Uniform Motor Vehicle Records Disclosure Act. The rules and regulations may include procedures under which the department, upon receiving a request for personal information that is not subject to disclosure in accordance with the exception provisions of sections 60-2906 and 60-2907, may mail a copy of such request to each individual who is the subject of the information, informing each such individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive his or her right to privacy under the act.

**Source:** Laws 1997, LB 635, § 11.

**60-2912 False statement; disclosure of sensitive personal information; penalty.**

(1) Any person requesting the disclosure of personal information from department records who misrepresents his or her identity or makes a false statement to the department on any application required to be submitted pursuant to the Uniform Motor Vehicle Records Disclosure Act shall be guilty of a Class IV felony.

(2) Any officer, employee, agent, or contractor of the department that knowingly discloses or knowingly permits disclosure of sensitive personal information in violation of the act shall be guilty of a Class I misdemeanor and shall be subject to removal from office or discharge in the discretion of the Governor or agency head, as appropriate.

**Source:** Laws 1997, LB 635, § 12; Laws 2001, LB 574, § 33.

**60-2913 Repealed. Laws 2000, LB 1317, § 18.**

**ARTICLE 30**

**FEES AND TAXATION**

Section	
60-3001.	Repealed. Laws 2005, LB 274, § 286.
60-3002.	Repealed. Laws 2005, LB 274, § 286.
60-3003.	Repealed. Laws 2005, LB 274, § 286.
60-3004.	Repealed. Laws 2005, LB 274, § 286.
60-3005.	Repealed. Laws 2005, LB 274, § 286.
60-3005.01.	Repealed. Laws 2005, LB 274, § 286.
60-3006.	Repealed. Laws 2005, LB 274, § 286.
60-3007.	Repealed. Laws 2005, LB 274, § 286.
60-3008.	Repealed. Laws 2005, LB 274, § 286.
60-3009.	Repealed. Laws 2005, LB 274, § 286.

**60-3001 Repealed. Laws 2005, LB 274, § 286.**

**60-3002 Repealed. Laws 2005, LB 274, § 286.**

**60-3003 Repealed. Laws 2005, LB 274, § 286.**

**60-3004 Repealed. Laws 2005, LB 274, § 286.**

**60-3005 Repealed. Laws 2005, LB 274, § 286.**

**60-3005.01 Repealed. Laws 2005, LB 274, § 286.**

**60-3006 Repealed. Laws 2005, LB 274, § 286.**

**60-3007 Repealed. Laws 2005, LB 274, § 286.**

**60-3008 Repealed. Laws 2005, LB 274, § 286.**

**60-3009 Repealed. Laws 2005, LB 274, § 286.**

**ARTICLE 31**

**STATE FLEET CARD PROGRAM**

Section	
60-3101.	State fleet card programs; Department of Transportation; University of Nebraska; State Treasurer; duties; political subdivisions; utilization authorized; unauthorized use prohibited.



Section

60-3102. State Fleet Card Fund; created; rebates credited to fund; use.

**60-3101 State fleet card programs; Department of Transportation; University of Nebraska; State Treasurer; duties; political subdivisions; utilization authorized; unauthorized use prohibited.**

(1) State fleet card programs shall be created and shall be administered separately by the Department of Transportation and the University of Nebraska. The Department of Transportation shall administer a fleet card program on behalf of state government and political subdivisions other than the University of Nebraska under a contract through the State Treasurer. The State Treasurer shall determine the type of fleet card or cards utilized in the state fleet card program. The State Treasurer shall contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating a fleet card program on behalf of the state, including the University of Nebraska, and political subdivisions that participate in the state contract for such services. Rules and regulations may be adopted and promulgated as needed by the Department of Transportation or the University of Nebraska for the operation of the state fleet card programs. The rules and regulations shall provide authorization instructions for all transactions. Expenses associated with the state fleet card programs shall be considered as an administrative or operational expense.

(2) For purposes of this section, fleet card means a payment card used for gasoline, diesel, and other fuels. Fleet cards may also be used to pay for vehicle and equipment maintenance and expenses at the discretion of the program administrator. The Department of Transportation and the University of Nebraska shall each designate a program administrator.

(3) Any state official, agency, board, or commission may utilize a state fleet card for the purchase of goods and services described in subsection (2) of this section for and on behalf of the State of Nebraska. Any political subdivision may utilize a fleet card for the purchase of goods and services described in subsection (2) of this section for lawful government purposes of the political subdivision. No disbursements or cash back on fleet card transactions shall be allowed.

(4) Vendors accepting a state fleet card shall obtain authorization for all transactions in accordance with instructions from the program administrator. Transaction authorization shall be from the financial institution, card-issuing bank, credit card company, charge card company, debit card company, or third-party merchant bank contracted to provide such service to the State of Nebraska. Each transaction shall be authorized in accordance with the instructions provided by the program administrator for each state official, agency, board, or commission or each political subdivision.

(5) Detailed transaction information for the purposes of tracking expenditures shall include fleet card identification, merchant name and address, transaction number, date, time, product, quantity, cost, and equipment meter reading if applicable. A state fleet card program may require an itemized receipt for purposes of tracking expenditures of a state fleet card purchase from a commercial vendor as acceptable detailed transaction information. If detailed transaction information is not provided, the program administrator shall have

the authority to temporarily or permanently suspend state fleet card purchases in accordance with rules and regulations.

(6) No officer or employee of the state or of a political subdivision shall use a state fleet card for any unauthorized use.

**Source:** Laws 2013, LB137, § 1; Laws 2017, LB339, § 236.

**60-3102 State Fleet Card Fund; created; rebates credited to fund; use.**

The State Fleet Card Fund is hereby created. All rebates received by the state from the fleet card program entered into by the State of Nebraska pursuant to section 60-3101 shall be credited to the fund. The fund may consist of fleet card rebates received on behalf of state officers, agencies, boards, and commissions and political subdivisions and shall be administered by the State Treasurer. Fleet card rebates received on behalf of state officers, agencies, boards, and commissions shall be transferred by the State Treasurer from the fund to the General Fund. Fleet card rebates received on behalf of political subdivisions shall be disbursed to political subdivisions consistent with the volume spent and contract terms.

**Source:** Laws 2013, LB137, § 2.

**ARTICLE 32**

**AUTOMATIC LICENSE PLATE READER PRIVACY ACT**

Section

- 60-3201. Act, how cited.
- 60-3202. Terms, defined.
- 60-3203. Prohibited acts; exceptions.
- 60-3204. Retention of captured plate data; limitation; updates; use; limitations.
- 60-3205. Operator; preserve data; written sworn statement; court order for disclosure; disclosures authorized.
- 60-3206. Governmental entity; duties; report; contents.
- 60-3207. Use of captured plate data and related evidence; prohibited.
- 60-3208. Violation of act; liability for damages.
- 60-3209. Data not considered public record; protection orders; effect.

**60-3201 Act, how cited.**

Sections 60-3201 to 60-3209 shall be known and may be cited as the Automatic License Plate Reader Privacy Act.

**Source:** Laws 2018, LB93, § 1.

**60-3202 Terms, defined.**

For purposes of the Automatic License Plate Reader Privacy Act:

(1) Alert means data held by the Department of Motor Vehicles, each criminal justice information system maintained in this state, the Federal Bureau of Investigation National Crime Information Center, the Federal Bureau of Investigation Kidnappings and Missing Persons list, the Missing Persons Information Clearinghouse established under section 29-214.01, and license plate numbers that have been manually entered into the automatic license plate reader system upon a law enforcement officer's determination that the vehicles or individuals associated with the license plate numbers are relevant and material to an ongoing criminal or missing persons investigation;

(2) Automatic license plate reader system means one or more mobile or fixed automated high-speed cameras used in combination with computer algorithms to convert images of license plates into computer-readable data;

(3) Captured plate data means global positioning system coordinates, date and time information, photographs, license plate numbers, and any other data captured by or derived from any automatic license plate reader system;

(4) Governmental entity means a department or agency of this state, the federal government, another state, or a political subdivision or an individual acting for or as an agent of any of such entities; and

(5) Secured area means a place, enclosed by clear boundaries, to which access is limited and not open to the public and into which entry is only obtainable through specific access-control points.

**Source:** Laws 2018, LB93, § 2.

**60-3203 Prohibited acts; exceptions.**

(1) Except as otherwise provided in this section or in section 60-3204, the use of an automatic license plate reader system by a governmental entity is prohibited.

(2) An automatic license plate reader system may be used when such use is:

(a) By a law enforcement agency of a governmental entity for the purpose of identifying:

(i) Outstanding parking or traffic violations;

(ii) An unregistered or uninsured vehicle;

(iii) A vehicle in violation of the vehicle equipment requirements set forth under the Nebraska Rules of the Road;

(iv) A vehicle in violation of any other vehicle registration requirement;

(v) A vehicle registered to an individual for whom there is an outstanding warrant;

(vi) A vehicle associated with a missing person;

(vii) A vehicle that has been reported as stolen; or

(viii) A vehicle that is relevant and material to an ongoing criminal investigation;

(b) By a parking enforcement entity for regulating the use of a parking facility;

(c) For the purpose of controlling access to a secured area;

(d) For the purpose of electronic toll collection; or

(e) To assist weighing stations in performing their duties under section 60-1301.

**Source:** Laws 2018, LB93, § 3.

**Cross References**

**Nebraska Rules of the Road**, see section 60-601.

**60-3204 Retention of captured plate data; limitation; updates; use; limitations.**

(1) A governmental entity shall not retain captured plate data obtained under subsection (2) of section 60-3203 for more than one hundred eighty days unless the captured plate data is:

- (a) Evidence related to a purpose listed in subsection (2) of section 60-3203;
  - (b) Subject to a preservation request under subsection (1) of section 60-3205;
- or
- (c) The subject of a warrant, subpoena, or court order.

(2) Any governmental entity that uses automatic license plate reader systems pursuant to subsection (2) of section 60-3203 must update such systems from the databases used by the governmental entities enumerated in such subsection at the beginning of each law enforcement agency shift if such updates are available.

(3) Any governmental entity that uses automatic license plate reader systems pursuant to subsection (2) of section 60-3203 may manually query captured plate data only when a law enforcement officer determines that the vehicle or individuals associated with the license plate number are relevant and material to an ongoing criminal or missing persons investigation subject to the following limitations:

- (a) Any manual entry must document the reason for the entry; and
- (b) Manual entries must be automatically purged at the end of each law enforcement agency shift, unless the criminal investigation or missing persons investigation remains ongoing.

**Source:** Laws 2018, LB93, § 4.

**60-3205 Operator; preserve data; written sworn statement; court order for disclosure; disclosures authorized.**

(1)(a) An operator of an automatic license plate reader system shall, upon the request of a governmental entity or a defendant in a criminal case, take all necessary steps to preserve captured plate data in its possession pending the issuance of a warrant, subpoena, or order of a court.

(b) A requesting governmental entity or defendant in a criminal case must specify in a written sworn statement:

- (i) The particular camera or cameras for which captured plate data must be preserved or the particular license plate for which captured plate data must be preserved; and
- (ii) The date or dates and timeframes for which captured plate data must be preserved.

(2) A governmental entity or defendant in a criminal case may apply for a court order for disclosure of captured plate data, which shall be issued by the court if the governmental entity or defendant in a criminal case offers specific and articulable facts showing there are reasonable grounds to believe the captured plate data is relevant and material to the criminal or civil action. Nothing in this subsection shall prevent the governmental entity from disclosing any captured plate data: (a) To the parties to a criminal or civil action; (b) for administrative purposes; (c) to alert the public of an emergency situation; or (d) relating to a missing person.

**Source:** Laws 2018, LB93, § 5.

**60-3206 Governmental entity; duties; report; contents.**

Except as otherwise provided in subdivision (3)(b) of this section, any governmental entity that uses an automatic license plate reader system shall:

(1) Adopt a policy governing use of the system and conspicuously post the policy on the governmental entity's Internet website or, if no website is available, in its main office;

(2) Adopt a privacy policy to ensure that captured plate data is not shared in violation of the Automatic License Plate Reader Privacy Act or any other law and conspicuously post the privacy policy on its Internet website or, if no website is available, in its main governmental office; and

(3)(a) Report annually to the Nebraska Commission on Law Enforcement and Criminal Justice on its automatic license plate reader practices and usage. The report shall also be conspicuously posted on the governmental entity's Internet website or, if no website is available, in its main office. The report shall include the following information, if captured by the automatic license plate reader system:

(i) The names of each list against which captured plate data was checked, the number of confirmed matches, and the number of matches that upon further investigation did not correlate to an alert; and

(ii) The number of manually-entered license plate numbers under subsection (3) of section 60-3204, the number of confirmed matches, and the number of matches that upon further investigation did not correlate to an alert.

(b) The reporting requirements of this subsection shall not apply to governmental entities using an automatic license plate reader system pursuant to subdivisions (2)(b) through (e) of section 60-3203.

**Source:** Laws 2018, LB93, § 6.

**60-3207 Use of captured plate data and related evidence; prohibited.**

No captured plate data and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of this state, or a political subdivision thereof, if the disclosure of that information would be in violation of the Automatic License Plate Reader Privacy Act.

**Source:** Laws 2018, LB93, § 7.

**60-3208 Violation of act; liability for damages.**

Any person who violates the Automatic License Plate Reader Privacy Act shall be liable for damages that proximately cause injury to the business, person, or reputation of another individual or entity.

**Source:** Laws 2018, LB93, § 8.

**60-3209 Data not considered public record; protection orders; effect.**

(1) Captured plate data held by a governmental entity is not considered a public record for purposes of sections 84-712 to 84-712.09 and shall only be disclosed to the person to whom the vehicle is registered or with the prior written consent of the person to whom the vehicle is registered or pursuant to a

disclosure order under subsection (2) of section 60-3205 or as the result of a match pursuant to subsection (2) of section 60-3203.

(2) Upon the presentation to a governmental entity of a valid, outstanding protection order pursuant to the Protection from Domestic Abuse Act, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, or section 28-311.09 or 28-311.10 protecting the driver of a vehicle jointly registered with or registered solely in the name of the individual against whom the order was issued, captured plate data may not be disclosed except pursuant to a disclosure order under subsection (2) of section 60-3205 or as the result of a match pursuant to subsection (2) of section 60-3203.

**Source:** Laws 2018, LB93, § 9.

#### Cross References

**Protection from Domestic Abuse Act**, see section 42-901.

**Uniform Interstate Enforcement of Domestic Violence Protection Orders Act**, see section 42-932.

## ARTICLE 33

### AUTOMATED-DRIVING-SYSTEM-EQUIPPED VEHICLES

#### Section

- 60-3301. Terms, defined.
- 60-3302. Driverless-capable vehicle; operation; conditions.
- 60-3303. Automated-driving-system-equipped vehicle; operation; authorized; provisions applicable; department; duties.
- 60-3304. Proof of financial responsibility.
- 60-3305. On-demand driverless-capable vehicle network; authorized.
- 60-3306. Nebraska Rules of the Road; how construed.
- 60-3307. Crash or collision; duties.
- 60-3308. Provisions of law governing vehicles and systems; limit on state and political subdivisions.
- 60-3309. Sections, how construed with respect to highways.
- 60-3310. Sections, how construed with respect to liability.
- 60-3311. Title and registration provisions; department; powers.

#### **60-3301 Terms, defined.**

For purposes of sections 60-3301 to 60-3311, the following definitions apply:

(1) Automated driving system means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis regardless of whether it is limited to a specific operational design domain, if any;

(2) Automated-driving-system-equipped vehicle means a motor vehicle equipped with an automated driving system;

(3) Conventional human driver means a human person who manually exercises in-vehicle braking, accelerating, steering, and transmission gear selection input devices in order to operate a motor vehicle;

(4) Department means the Department of Motor Vehicles;

(5) Driverless-capable vehicle means a motor vehicle equipped with an automated driving system capable of performing all aspects of the dynamic driving task within its operational design domain, if any, including achieving a minimal risk condition, without any intervention or supervision by a conventional human driver;

(6) Dynamic driving task means all of the real-time operational and tactical functions required to operate a motor vehicle within its specific operational design domain, if any, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints;

(7) Minimal risk condition means a reasonably safe state to which an automated driving system brings an automated-driving-system-equipped vehicle upon experiencing a performance-related failure of the vehicle's automated driving system that renders the vehicle unable to perform the entire dynamic driving task, such as bringing the vehicle to a complete stop and activating the hazard lamps;

(8) On-demand driverless-capable vehicle network means a transportation service network that uses a software application or other digital means to dispatch driverless-capable vehicles for purposes of transporting persons or goods, including for-hire transportation, transportation for compensation, and public transportation; and

(9) Operational design domain means a description of the specific operating domain in which an automated driving system is designed to properly operate, including, but not limited to, roadway types, speed range, environmental conditions such as weather and time of day, and other domain constraints.

**Source:** Laws 2018, LB989, § 1.

#### **60-3302 Driverless-capable vehicle; operation; conditions.**

A driverless-capable vehicle may operate on the public roads of this state without a conventional human driver physically present in the vehicle, as long as the vehicle meets the following conditions:

(1) The vehicle is capable of achieving a minimal risk condition if a malfunction of the automated driving system occurs that renders the system unable to perform the entire dynamic driving task within its intended operational design domain, if any; and

(2) While in driverless operation, the vehicle is capable of operating in compliance with the applicable traffic and motor vehicle safety laws and regulations of this state that govern the performance of the dynamic driving task, including, but not limited to, safely negotiating railroad crossings, unless an exemption has been granted by the department. The department shall consult with the railroad companies operating in this state when considering an exemption that affects vehicle operations at railroad crossings.

**Source:** Laws 2018, LB989, § 2.

#### **60-3303 Automated-driving-system-equipped vehicle; operation; authorized; provisions applicable; department; duties.**

(1) Notwithstanding any other provision of law, the operation on the public roads of this state of an automated-driving-system-equipped vehicle capable of performing the entire dynamic driving task within its operational design domain while a conventional human driver is present is lawful. Such operation shall be subject to the Nebraska Rules of the Road, as applicable. In addition, the conventional human driver shall be licensed as required under the Motor Vehicle Operator's License Act, shall remain subject to the Nebraska Rules of the Road, shall operate the automated-driving-system-equipped vehicle accord-

ing to the manufacturer's requirements and specifications, and shall regain manual control of the vehicle upon the request of the automated driving system.

(2) The automated driving system feature, while engaged, shall be designed to operate within its operational design domain in compliance with the Nebraska Rules of the Road, including, but not limited to, safely negotiating railroad crossings, unless an exemption has been granted by the department. The department shall consult with the railroad companies operating in this state when considering an exemption that affects vehicle operations at railroad crossings.

**Source:** Laws 2018, LB989, § 3.

**Cross References**

**Motor Vehicle Operator's License Act**, see section 60-462.  
**Nebraska Rules of the Road**, see section 60-601.

**60-3304 Proof of financial responsibility.**

Before an automated-driving-system-equipped vehicle may operate on the public roads of this state, a person shall submit proof of financial responsibility satisfactory to the department that the automated-driving-system-equipped vehicle is covered by insurance or proof of self-insurance that satisfies the requirements of the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 2018, LB989, § 4.

**Cross References**

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-3305 On-demand driverless-capable vehicle network; authorized.**

(1) Notwithstanding any other provision of law, a person may operate an on-demand driverless-capable vehicle network. Such a network may provide transportation of persons or goods, including:

- (a) For-hire transportation, including transportation for multiple passengers who agree to share the ride in whole or in part; and
- (b) Public transportation.

(2) An on-demand driverless-capable vehicle network may connect passengers to driverless-capable vehicles either (a) exclusively or (b) as part of a digital network that also connects passengers to human drivers who provide transportation services, consistent with applicable law, in vehicles that are not driverless-capable vehicles.

**Source:** Laws 2018, LB989, § 5.

**60-3306 Nebraska Rules of the Road; how construed.**

Subject to section 60-3302, the Nebraska Rules of the Road shall not be construed as requiring a conventional human driver to operate a driverless-capable vehicle that is being operated by an automated driving system, and the automated driving system of such vehicle, when engaged, shall be deemed to fulfill any physical acts required of a conventional human driver to perform the dynamic driving task.

**Source:** Laws 2018, LB989, § 6.



## Cross References

Nebraska Rules of the Road, see section 60-601.

**60-3307 Crash or collision; duties.**

In the event of a crash or collision:

(1) The automated-driving-system-equipped vehicle shall remain on the scene of the crash or collision and otherwise comply with sections 60-696 to 60-698; and

(2) The owner of the automated-driving-system-equipped vehicle, if capable, or a person on behalf of the automated-driving-system-equipped vehicle owner, shall report any crash or collision as required by section 60-698.

**Source:** Laws 2018, LB989, § 7.

**60-3308 Provisions of law governing vehicles and systems; limit on state and political subdivisions.**

(1) Automated-driving-system-equipped vehicles and automated driving systems are governed exclusively by sections 60-3301 to 60-3311. The department is the sole and exclusive state agency that may implement sections 60-3301 to 60-3311.

(2) The state or any political subdivision shall not impose requirements, including performance standards, specific to the operation of automated-driving-system-equipped vehicles, automated driving systems, or on-demand driverless-capable vehicle networks in addition to the requirements of sections 60-3301 to 60-3311.

(3) The state or any political subdivision thereof shall not impose a tax or other requirements on an automated-driving-system-equipped vehicle, an automated driving system, or an on-demand driverless-capable vehicle network, where such tax or other requirements relate specifically to the operation of automated-driving-system-equipped vehicles.

**Source:** Laws 2018, LB989, § 8.

**60-3309 Sections, how construed with respect to highways.**

Nothing in sections 60-3301 to 60-3311 shall be construed to require the State of Nebraska or any political subdivision thereof to plan, design, construct, maintain, or modify any highway, as defined in section 60-624, for the accommodation of an automated-driving-system-equipped vehicle or a driverless-capable vehicle.

**Source:** Laws 2018, LB989, § 9.

**60-3310 Sections, how construed with respect to liability.**

Nothing in sections 60-3301 to 60-3311 shall be construed to provide greater liability than is already allowed under the Political Subdivisions Tort Claims Act or the State Tort Claims Act.

**Source:** Laws 2018, LB989, § 10.

## Cross References

Political Subdivisions Tort Claims Act, see section 13-901.  
State Tort Claims Act, see section 81-8,235.

**60-3311 Title and registration provisions; department; powers.**

The department is authorized to title and register, pursuant to the Motor Vehicle Certificate of Title Act and the Motor Vehicle Registration Act, automated-driving-system-equipped vehicles and driverless-capable vehicles that do not meet applicable federal motor vehicle safety standards but which have been granted an exemption by the National Highway Traffic Safety Administration.

**Source:** Laws 2018, LB989, § 11.

**Cross References**

**Motor Vehicle Certificate of Title Act**, see section 60-101.

**Motor Vehicle Registration Act**, see section 60-301.